

JOINT APPENDIX

Case No. 11,228

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GISSEL PACKING COMPANY, INC., RESPONDENT

PETITION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

*To the Honorable, the Judges of the United States Court
of Appeals for the Fourth Circuit:*

The National Labor Relation Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, et seq., as amended by 73 Stat. 519), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Gissel Packing Company, Inc., Huntington, West Virginia, its officers, agents, successors, and assigns. The proceeding resulting in said Order is known upon the records of the Board as Case Nos., 9-CA-3472 and 9-CA-3583.

In support of this petition the Board respectfully shows:

(1) Respondent is engaged in business in the State of West Virginia, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on March 25, 1966, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10(e) of the National Labor Relations Act, as amended, and pursuant to Rule 27(7) of

this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony, and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors, and assigns, to comply therewith.

/s/ MARCEL MALLET-PREVOST
Assistant General Counsel
NATIONAL LABOR RELATIONS
BOARD

[JURAT dated February 23, 1967]

RESPONDENT'S ANSWER TO PETITIONER'S PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Fourth Circuit:

Respondent answers the Petition heretofore filed in this matter as follows:

1. Answering numbered paragraph (1) of said Petition, Respondent admits that it is engaged in business in the State of West Virginia, within this judicial circuit, and that this Court has jurisdiction of said Petition. Respondent denies that any unfair labor practices occurred.

2. Answering numbered paragraph (2) of said Petition, Respondent admits that the Board on March 25, 1966, stated its findings of fact and conclusions of law, issued an Order directed to the Respondent, and that the Board's decisions and order were served on Respondent. Respondent denies that "due proceedings" were had before the Board and that the Board "duly" stated its findings of fact and conclusions of law, within the meaning of due process of law as to each.

3. Respondent can neither admit nor deny numbered paragraph (3) of the Petition, inasmuch as it appears to be a statement of intention. Respondent does not deny, however, the validity of the procedure set out therein.

4. Respondent further says that enforcement of the Board's Order should be denied and an Order entered by this Court setting aside in whole the said Order of the Board on the following grounds:

(a) The Board's conclusions of law upon which said Order was based, are erroneous.

(b) So much of the Board's decisions and findings of fact has formed the basis for the Order are not supported by substantial evidence on the record as a whole.

(c) To route the proceeding in its entirety, the Board exhibited prejudice and bias against the Respondent an unmistakable partisanship in favor of the Food Store Em-

ployees Union, Local No. 347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as is apparent from the record.

(d) The Order is ambiguous and conflicting within its self.

(e) Errors of commission and omission, prejudicial to the Respondent, were made by the Trial Examiner upon hearing of this matter.

(f) The Board, in its Order, considered and based certain findings upon testimony which was improper and should have been excluded.

(g) Errors apparent on the face of the record and to which objection was made to the Board in exceptions to the Trial Examiner's decision.

WHEREFORE, the Respondent prays this Honorable Court that it caused notice of the filing of the Answer to be served upon the Petitioner, that it make and enter a decree setting aside the Order of the Board and granting Respondent such other further relief as justice may require.

/s/ J.E. JENKINS, JR.
Of Counsel for Respondent

JENKINS, SCHAUB & FENSTERMAKER
500 Kelly-Hatfield Building
Huntington, West Virginia
Counsel for Respondent

[JURAT dated March 7, 1967]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS**[fol. 1] UNITED STATES OF AMERICA****BEFORE THE NATIONAL LABOR RELATIONS BOARD
NINTH REGION****Case No.: 9-CA-3472, 9-CA-3583****IN THE MATTER OF:****GISSEL PACKING COMPANY, INC.****and****FOOD STORE EMPLOYEES UNION, LOCAL NO. 347, AMAL-
GAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF
NORTH AMERICA, AFL-CIO****Cabell County Court House
Huntington, West Virginia,****Wednesday, August 4, 1965.**

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m., EDST.

BEFORE:**ROSANNA A. BLAKE, ESQ., Trial Examiner***** * * *****[fol. 3] TRIAL EXAMINER ROSANNA A. BLAKE:
On the record.**

The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Gissel Packing Company, Inc. and Food Store Employees Union, Local # 347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Cases Numbers 9-CA-3472 and 9-CA-3583.

The Trial Examiner conducting this hearing is Rosanna A. Blake.

Will counsel and other representatives for the parties please state their appearances for the record?

MR. BAKER: For the General Counsel, Jack V. Baker, Cincinnati, Ohio.

MR. GUNNOE: For the Charging Party, Woodrow R. Gunnoe, Post Office Box 2751, Charleston 30, West Virginia.

TRIAL EXAMINER: For the Respondent?

MR. JENKINS: For the Respondent, John E. Jenkins, Jr., Post Office Box 1457, Huntington, West Virginia.

TRIAL EXAMINER: The official reporter makes the only official transcript of these proceedings and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted [fol. 4] either by way of stipulation or motion to the Trial Examiner for her approval.

All matter that is spoken in the hearing room while the hearing is in session is recorded by the official reporter unless the Trial Examiner specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statement, request to go off the record should be directed to the Trial Examiner and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rulings. Upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. If a copy of any exhibit is not available at the time the original is received it will be the responsibility of the party offering such exhibit to submit the copy before the close of the hearing. In the event such copy is not submitted and the filing thereof is not for good reason shown been waived by the Trial Examiner, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument

which shall be included in the stenographic report of the hearing. In the absence of a request the Trial Examiner may ask for oral argument if at the close of the hearing she believes that such argument would be beneficial to her understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions or both with the Trial Examiner who before the close of the hearing will fix a time for such filing.

Are you ready to offer your formal papers, Mr. Baker?

MR. BAKER: Yes. The index and description of formal documents and the formal documents have been marked for identification as General Counsel's Exhibit 1 (a) through 1(n). The formal documents have heretofore been shown to the parties. At this time I move that they be received into evidence.

MR. JENKINS: No objection.

TRIAL EXAMINER: Received.

(Thereupon, the above-mentioned documents were marked General Counsel's Exhibits 1 (a) through 1 (n) for identification and received into evidence.)

TRIAL EXAMINER: Are you ready to proceed?

MR. BAKER: During the off-the-record session I asked counsel for Respondent whether he would be willing to amend his answer at this time to admit paragraph 1 of the complaint in Case No. 9-CA-3583, the service of the charge. It is denied in his answer for lack of knowledge. [fol. 6] MR. JENKINS: The Respondent will admit that portion of paragraph 1 in the complaint in Case Number 9-CA-3583 with respect to the receipt or service by the Respondent of registered mail on May the 13th. We don't have any knowledge as to when this charge was filed by the Union and therefore we can't stipulate to it.

MR. BAKER: Did you not receive a copy of the charge with the filing date thereon up in the right-hand corner?

MR. JENKINS: This is a document prepared by the Union and I'm not prepared to say when they filed it.

TRIAL EXAMINER: But you admit you have received this document?

MR. JENKINS: Yes, Your Honor.

MR. BAKER: The filing date, as a matter of fact, was put on in the Regional Office, Mr. Jenkins.

TRIAL EXAMINER: They have admitted receipt of it.

MR. JENKINS: Yes.

MR. BAKER: Also, I would ask if counsel would not admit that the Charging Party is a Union within the meaning of Section 2(5), and I note for the Trial Examiner from my own personal experience that this is, I believe, the third hearing that Mr. Jenkins and I have been involved in involving the same Union. Again, it's simply a matter of having not to unnecessarily put on proof of a matter that is patently in existence, and I would suspect in light of the past litigation and Mr. Jenkins' representation of Respondents in those cases that he does in fact know that this organization is a Union within the meaning of Section 2(5), plus the Board in both of those cases has found the Union to be so.

MR. JENKINS: We will so stipulate.

TRIAL EXAMINER: Thank you.

MR. BAKER: So you would admit then paragraph 3 of both complaints. That's the stipulation.

TRIAL EXAMINER: Received.

MR. BAKER: I also would like at this time to move to amend the complaint to correct an obvious typographical error in Case Number 9-CA-3472, specifically paragraph 5, sub-paragraph (a), sub-paragraph viii, which reads: "During the first week of September 1965," and that date should be during the first week of February 1965, the exact date being unknown. It obviously could not be September 1965 at this date.

TRIAL EXAMINER: Any objection?

MR. JENKINS: Yes, yes, Your Honor, we oppose the amendment or in the alternative if Your Honor grants the amendment we ask a continuance of the hearing on that respect.

TRIAL EXAMINER: Well, I'm prepared to, if you'll tell me how much time you'll need, I'll entertain a motion.

MR. JENKINS: Perhaps after our first reces, I'll consult with my clients.

TRIAL EXAMINER: Very well.

[fol. 8] MR. BAKER: That concludes all the preliminary motions I would have, Your Honor.

There is one more. I note from the complaint in paragraph 4 of both complaints that the Respondent denies that K.H. (Charles) Gissel; Herbert Gissel; and Alfreda L. Closterman do not occupy the position set opposite their names, respectively, vice president; vice president; secretary-treasurer. Now, the General Counsel has in its position various documents on the letterhead of this Respondent wherein it lists K.H. Gissel, Vice President; Herbert Gissel—or K.H. Gissel, I assume it's Herbert Gissel; Vice President; and Alfreda L. Closterman as Secretary-Treasurer.

MR. JENKINS: Your Honor, to clarify our position, we do not deny that the respective parties there occupy the offices shown. What we deny is that at all times material in this complaint they were acting as agents on behalf of the Corporation.

TRIAL EXAMINER: Are you denying their supervisory part also?

MR. JENKINS: Correct.

TRIAL EXAMINER: Though you admit the title?

MR. JENKINS: Correct.

TRIAL EXAMINER: The question is whether they have the necessary authority?

MR. JENKINS: That's correct, yes, ma'm.

[fol. 9] MR. JENKINS: I have some preliminary motions, Your Honor.

The Respondent with respect to the complaint in Case 9-CA-3472 makes the following motions:

Number 1, to dismiss Sections 5(a) i, ii, on the ground that it is barred by the statute of limitations.

TRIAL EXAMINER: Motion is denied.

MR. JENKINS: Respondent would submit that no unfair labor practice findings be found with respect to conduct prior to a six months' period.

MR. BAKER: You did deny the motion?

TRIAL EXAMINER: Yes.

MR. JENKINS: With respect to Case 9-CA-3472, Respondent moves to dismiss Section 5(a) iii, on the ground that it does not charge an unfair labor practice or any violation of the National Labor Relations Act.

[fol. 10] In amplification of the motion I would say that the Respondent making a statement that it would give up its business and let the Union operate its plant is not a violation of any law.

TRIAL EXAMINER: All right.

TRIAL EXAMINER: The motion is denied. You can argue it as an issue in briefs.

MR. JENKINS: The Respondent moves to dismiss paragraphs 5(a) vi, vii, ix; and paragraph 5(b), on the ground that these charges do not constitute, even if true, unfair labor practices or a violation of any of the Federal labor laws. All of these pertain to Case Number 9-CA-3472.

[fol. 11] MR. BAKER: I oppose the motion.

TRIAL EXAMINER: Denied.

MR. JENKINS: The Respondent moves to dismiss the allegations contained in the complaint in Case Number 9-CA-3583, Section 5(b), (c), and (f) on the ground the alleged occurrences contained therein, even if true, do not constitute unfair labor practices or violation of any Federal labor laws.

MR. BAKER: Oppose the motion.

TRIAL EXAMINER: Denied.

[fol. 12] SHERWOOD M. SPENCER

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q Would you please state your name and address for the record? A Sherwood M. Spencer, secretary-treasurer of Local 347 of the Food Store Employees Union, Post Office Box 2751, Charleston, West Virginia.

Q Mr. Spencer, was there a Union campaign conducted under your general auspices or supervision at the Gissel Packing Company, Inc., in Huntington, West Virginia? A There was.

Q Do you recall approximately when that campaign began? A As near as I can approximate, the early part of 1965.

Q Pursuant to that campaign—

MR. JENKINS: Is Mr. Brooks a witness? Excuse me.

MR. BAKER: No, he isn't.

MR. JENKINS: All right.

Q (By Mr. Baker:) Pursuant to that campaign, Mr. Spencer, what action, if any, did you take relative to gaining recognition as the bargaining representatives for the employees involved? A After we received a majority of the authorization cards, I called a Mr. Gissel on the phone.

Q Do you remember which Mr. Gissel that was? A Only from my notes would I be able to tell you but I believe it was Mr. Charles Gissel.

[fol. 14] Q I see. All right. Did you manage to reach Mr. Gissel by telephone? A I did.

Q Was there a subsequent conversation with Mr. Gissel? Did you talk to him? A I did talk to him, yes, sir.

Q What was the substance of the conversation between you and Mr. Gissel? A I asked him whether he remembered me, the name. He said he had some recollection of it, he believed he did. I told him we represented a majority of the employees in his plant and asked for bargaining and recognition. Mr. Gissel told me that they had an attorney I would have to talk to. In fact, I believe he said they had two attorneys and I asked him who they were and one of them he said was Mr. Green, the other name he did not give me.

MR. BAKER: I would like to have these documents marked for identification as General Counsel Exhibit 2.

(General Counsel's Exhibit 2 was thereupon marked for identification.)

Q (By Mr. Baker:) Mr. Spencer, I show you what has been marked as General Counsel's Exhibit 2 for identification and ask you if you can identify it. It's a letter dated January 22nd, 1965, a copy of a letter. A Yes, I sent that to Mr. Charles Gissel.

[fol. 15] Q That letter was sent how? A Sent by certified mail under date of January 22nd, 1965.

MR. BAKER: Your Honor, I offer General Counsel Exhibit 2 into evidence.

I'm sorry, Mr. Jenkins.

(Document is handed to Mr. Jenkins by Mr. Baker.)

MR. BAKER: Mark this as General Counsel Number 3, please.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit Number 3 for identification.)

MR. JENKINS: No objection.

(Thereupon, the document heretofore marked General Counsel's Exhibit Number 2 for identification was received in evidence.)

Q (By Mr. Baker:) Would you state whether or not you subsequently received a reply thereto from Mr. Gissel — After you sent your letter would you state whether or not you subsequently received a reply thereto from Mr. Gissel? A I did.

Q I now show you what has been marked as General Counsel Exhibit 3 for identification and ask if you can identify that letter, which is a letter dated January 26th, 1965. A I did receive this letter, yes, sir.

Q The letter is over whose signature? A K.H. Gissel, [fol. 16] parenthesis marked Charles.

MR. BAKER: I move that General Counsel Exhibit 3 marked for identification be received into evidence.

MR. JENKINS: No objection.

TRIAL EXAMINER: Received.

(Thereupon, the document heretofore marked General Counsel's Exhibit No. 3 for identification was received in evidence.)

MR. BAKER: May we have about two or three minutes, Your Honor?

TRIAL EXAMINER: All right.

(Short recess.)

TRIAL EXAMINER: On the record.

MR. BAKER: May I have this marked for identification as General Counsel's Exhibit 4?

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit No. 4 for identification.)

Q. (By Mr. Baker:) I now show you what has been marked General Counsel's Exhibit 4 for identification and ask you if you can identify this document which is a letter dated February 10th, addressed to Mr. K.H. Gissel?
A Yes, I wrote this letter to Mr. Gissel.

Q Was it deposited in the mail in the ordinary course of business? A It was:

[fol. 17] MR. BAKER: Your Honor, I offer General Counsel's Exhibit 4 into evidence.

MR. JENKINS: I haven't seen it.

MR. BAKER: You haven't seen it? I'm sorry.

(Document handed to Mr. Jenkins by Mr. Baker.)

MR. BAKER: Would you identify this as 5, please?

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit No. 5 for identification.)

MR. JENKINS: No objection to Number 4.

TRIAL EXAMINER: It's received.

(Thereupon, the document heretofore marked General Counsel's Exhibit No. 4 for identification was received in evidence.)

MR. BAKER: Would you mark this General Counsel's Exhibit 6 for identification, please?

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit No. 6 for identification.)

Q (By Mr. Baker:) Did you subsequently receive a reply to your letter of February 10, 1965? A I did.

Q I show you what has been marked as General Counsel Exhibit 5 for identification and ask you if you can identify that, which is a letter dated February 12 and signed by Mr. Karl Gissel.

[fol. 18] MR. BAKER: I might ask counsel if Karl and Charles Gissel are one and the same person, Mr. Jenkins?

MR. JENKINS: Yes, they are.

TRIAL EXAMINER: Karl and Charles?

MR. BAKER: Karl is with a K, Your Honor.

THE WITNESS: Yes.

MR. BAKER: At this time I move that General Counsel's Exhibit 5 for identification be received.

Would you mark this as General Counsel Exhibit 7, please?

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit No. 7 for identification.)

MR. JENKINS: No objection to Number 5.

TRIAL EXAMINER: Received.

(Thereupon, the document heretofore marked General Counsel's Exhibit No. 5 for identification was received in evidence.)

Q (By Mr. Baker:) Mr. Spencer, I now show you what has been marked for identification as General Counsel Exhibit 6, a letter dated February 16, 1965, addressed to Mr. Carl—C-a-r-l Gissel, and signed by you. Can you identify that letter? A I did write the letter. I had written the letter, yes.

Q Was that letter deposited in the mail in the normal course of business? A It was.

[fol. 19] MR. BAKER: I, at this point, move that General Counsel's 6 for identification be received.

MR. JENKINS: No objection.

TRIAL EXAMINER: Received.

(Thereupon, the document hertofore marked General Counsel Exhibit No. 6 for identification was received in evidence.)

Q (By Mr. Baker:) Did you then subsequently receive a reply to that letter, General Counsel's Exhibit 6?
A I did not.

Q I show you what has been marked for identification as General Counsel Exhibit 7 and ask you if you can identify that which is a letter dated February 17, 1965, again signed by Karl Gissel? A Yes, I did receive this.

MR. BAKER: I move that General Counsel's Exhibit 7 for identification be received in evidence.

MR. JENKINS: We have no objection to Number 7. If there's an extra copy of Number 7, I'd like to have it.

TRIAL EXAMINER: Received.

(Thereupon, the document heretofore marked General Counsel Exhibit 7 for identification was received in evidence.)

Q (By Mr. Baker:) Mr. Spencer, did you have any further contact or conversation, either by telephone or letters, with Mr. Gissel relative to your demand? A Not [fol. 20] that I remember.

Q Did at any time Mr. Gissel agree to meet with you and discuss the possibility of representation? A No, sir.

Q Has your Union in the past had any representation proceedings with the Gissel Packing Company? A We have had.

MR. BAKER: Mark this as General Counsel Exhibit 8, please.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit No. 8 for identification.)

MR. BAKER: Your Honor, I have only one copy of this I notice at the moment. With Your Honor's permis-

sion I will have it duplicated and inserted in the file. I won't be able to do that until the hearing closes. I will have it done back at the office when the exhibits are returned. If it please the Trial Examiner the reporter could just insert the original in the original docket and leave a space so a duplicate may be inserted. I can then do that. But she may have custody of this until such time as it is returned to the office.

TRIAL EXAMINER: You have my approval.

MR. JENKINS: Your Honor, I would like, before determining whether we will object to Exhibit Number 8, I [fol. 21] would like to know the materiality of this exhibit.

TRIAL EXAMINER: I haven't even seen it.

(Document is handed to Trial Examiner by Mr. Baker.)

TRIAL EXAMINER: What is the materiality?

MR. BAKER: I think Your Honor will note that the first demand letter, which was the letter I believe of January the 22nd, it's a letter confirming a telephone conversation of the same date, wherein Mr. Spencer requested recognition and bargaining for the eligible employees at this plant. I don't believe the correspondence—perhaps I best not say at this time until I can at least interrogate Mr. Spencer with that one question and then I'll make my point.

Q (By Mr. Baker:) Mr. Spencer, during your telephone conversation of January 22nd, with Mr. Gissel, what did you say to him as you recall? This is the conversation preceding the first written document that you sent him concerning that conversation wherein you stated earlier that you had requested recognition. A It was a very short conversation. As I remember I asked him for—I told him we represented a majority of the employees. First, I asked him if he remembered my name. He said he had recollection and thought he did. And I asked for recognition and bargaining for the majority of the employees whom I told him we represented of the eligible employees. And he referred me to a lawyer. He first said [fol. 22] that he would I believe that he would call me back or I could call him back, and rather than that I

said, well, I had better put it in writing, "send it to you in writing so that you will have it as a matter of record."

Q That was the letter of January 22nd? A The first letter whatever it is.

TRIAL EXAMINER: General Counsel's Exhibit 2.

Q (By Mr. Baker:) After that time did you ever tell Mr. Gissel or his attorney exactly what employees you were requesting? A No, except eligible employees.

MR. BAKER: The materiality of this, what has been marked for identification as General Counsel Exhibit 8, Your Honor, which is a Decision and Direction of Election by the National Labor Relations Board, dated January 27, 1961, which involves this Respondent and this Charging Party, sets forth the unit, or an appropriate unit, and it's certainly pertinent to this hearing.

MR. JENKINS: We certainly object to that. This is an interesting observation by Mr. Baker in view of the fact that in the case of Logan Packing Company before the Board he took exactly the opposite position, namely, that a unit determined in approximately 1960 with the same Union involving another meat packing company in Huntington was not binding upon the Union or the General Counsel during the current year because they wanted to change the unit and he advanced the argument in [fol. 23] the Logal Packing Company case that any prior determination of the unit by the Labor Board back in either 1960 or '61 was immaterial to any issue between the Union and the Company in the current year. Therefore, adopting his own argument we object to the admissibility of this document.

And for the second place, this document contains other matters in here that aren't properly before Your Honor or the Board and if Mr. Baker disputes my statement as to his representation in the Logal case, I will be prepared to bring the record in, which has already been transcribed, to prove it.

TRIAL EXAMINER: Do you want to reply?

MR. BAKER: If I recall that case, which I don't think is before this Trial Examiner, it was a matter of route salesmen. The employer took the position, as I recall and I might well be wrong—

MR. JENKINS: You are. It involved the truck drivers. The same people who are driving—

MR. BAKER: I thought I said truck drivers. That's what I said Mr. Jenkins.

MR. JENKINS: Route salesmen.

MR. BAKER: At which time the Union in their demand in that case specifically excluded truck drivers in their demand for recognition, and I think it is clear under Board law that a production and maintenance unit, excluding route salesmen or driver salesmen or truck drivers, has often been more times than not found [fol. 24] to be appropriate one excluding such drivers. On the other hand, the Board probably has in many cases found an all-employee unit, production and maintenance employees including truck drivers to be an appropriate unit. And I think that in that case I gave the argument to Mr. Jenkins that either one of the units could be appropriate and that the Trial Examiner in that case was not bound by the Board's holding that in a prior hearing where it would appear that one or both of the parties wanted the drivers included and did so that the Trial Examiner in the instant case, the Logan case, was not bound by that, and I think that's probably equally true today. On the other hand, I think that where the Board has found a unit to be appropriate and that the Union in a subsequent demand is relying upon all eligible employees, that it can be reasonably inferred that the Union that was involved in the prior case was relying upon the Board's findings as to which unit was appropriate and was asking for that unit, and for that reason I think this document is pertinent and germane to this hearing.

TRIAL EXAMINER: It will be received. Needless to say receipt of a document is no indication of the weight I'll give it and the question of weight is certainly a matter for argument by counsel.

* * *

[fol. 25] MR. BAKER: I have no further questions.

MR. JENKINS: In order to protect the record because I think this is important, I will move to exclude General Counsel's Exhibit 8 on the ground of its lack of material-

ity; the fact that it has not been properly authenticated and that it contains information therein which has no bearing on any proper issue before the Trial Examiner.

TRIAL EXAMINER: The question of authentication, are you questioning that this is not in fact what it appears to be, a decision and direction of election?

MR. JENKINS: I am because I do not know, Your Honor. I have never seen the document until today.

TRIAL EXAMINER: As to the third point I might say that it has been offered for one purpose only, as I understand, the question of the unit description. All other information on it would be ignored if it was offered solely for that purpose. It has been received only for the purpose offered and any other information on there is utterly immaterial at this point.

Can you, Mr. Baker, authenticate this document?

But it does appear to be a formal document of the type issued by the Board and the names appearing thereon seem to be members of the Board on or about that time.

MR. BAKER: Your Honor, I can only state to this point as far as authenticity that it came from the files of [fol. 26] the Regional Office from the file of that case.

MR. JENKINS: My motion to strike on the grounds that this is not proper evidence.

TRIAL EXAMINER: You have the materiality question which you made before.

MR. JENKINS: Yes, Your Honor, and the authentication question, and I object to the statement of Mr. Baker as to where he got his evidence. He's not on the witness stand.

MR. BAKER: Your Honor, I think—

TRIAL EXAMINER: I think I can take official notice that if I had the right to the file, I suppose I could do that if necessary. It will be received. Again, it's a matter of argument as to the materiality and the question is one for argument.

* * * *

[fol. 27] CROSS EXAMINATION

BY MR. JENKINS:

Q How did the campaign begin early in 1965? A The campaign began in earnest by contact between representa-

tives of our staff and the employees of Gissel Packing Company. Contact was maintained for a much greater period of time with individuals of the Company.

Q The campaign began on what date in January? A I would not know.

Q Who instigated the campaign at that time?

MR. BAKER: I'm going to object as to the materiality. I don't know that that—On direct examination the only question asked was he aware that there was a campaign and from there on went into the demand for recognition. Now, such questions may be pertinent but I don't think they're pertinent from this witness. This is [fol. 28] certainly going beyond the scope of direct examination.

TRIAL EXAMINER: What is the materiality?

MR. JENKINS: I think the question that this witness was asked was the campaign began early in 1965 and apparently the General Counsel felt that was material to establish that, and I want to know what the circumstances were and who started it in order to—

TRIAL EXAMINER: What is the question as to who started it?

MR. JENKINS: The question is that he has testified that it began at that time and in order to cross-examine him to test the credibility of that I would like to know who started it and what the circumstances were to test the truth of his statement on direct examination that the campaign did begin in January, 1965.

TRIAL EXAMINER: I assume you that any liability for this Company will be dated from the date in the request so far as the bargaining goes. It will have no obligation to bargain until there is request to bargain. Are you objecting—

MR. BAKER: I'm objecting as to the materiality of the question plus the fact that I think he's exceeding the scope of the direct examination by a good deal, I realize that's a technical objection, but I see no materiality or relevancy in asking this witness who instigated, I believe were counsel's words, this campaign. Now, it may become material but I don't think it's material from this witness. [fol. 29] TRIAL EXAMINER: Overruled. He may answer.

MR. JENKINS: Now, may I have the question again.

TRIAL EXAMINER: Would you read it, please?

(Question read.)

THE WITNESS: I would say in any organization work—

MR. BAKER: Can you just answer names, Mr. Spencer, if you know names?

THE WITNESS: I would not at this moment know which of our representatives contacted or made the contact with the Gissel Packing Company employees first.

Q (By Mr. Jenkins:) Who are the representatives of your Union that have been involved in this campaign? A We have Mr. Gunnoe—

MR. BAKER: Object. I don't see the materiality again from this witness as to what representatives from the Union were involved in the campaign.

TRIAL EXAMINER: Are you questioning these gentlemen in fact were representatives of the Union?

MR. JENKINS: I'm questioning his statement that he doesn't know who they were and I'm going to try to get into that a little better to see how accurate his answer is.

MR. BAKER: I think, Your Honor, the witness' answer is he didn't know which or who first contacted.

TRIAL EXAMINER: Yes.

[fol. 30] MR. BAKER: Not that he didn't know but who the first one was.

TRIAL EXAMINER: You can ask another question. Go ahead.

MR. JENKINS: Now, will you ask him the question that we had before?

TRIAL EXAMINER: He said he didn't know who before was the first one.

MR. JENKINS: Yes, Your Honor, and I followed that up with the question that I believe was subject to Mr. Baker's objection.

MR. BAKER: The question was who are his representatives.

TRIAL EXAMINER: Very well. You can answer.

THE WITNESS: Mr. Gunnoe, Mr. Brooks.

Q (By Mr. Jenkins:) Has Mr. Brooks been involved with the campaign at Gissel? A I would not be certain

of that. We had other campaigns going on at this same time in Huntington and I would not know which of our representatives made contact with Gissel.

Q Was anyone involved with Gissel from your Union other than Brooks and Gunnoe? A Representatives from the International Union, yes; but not from our Union, Local Union.

Q Did anyone from the International Union in January contact employees of Gissel for the first time? A They very well could have.

[fol. 31] They stayed in Huntington, they were working for us at that time, yes.

Q Who were they? A Mr. Cass and we had two others but I could not tell you who the other two were at this time.

Q You're telling us that Mr. Brooks and Mr. Gunnoe here—they work under your direction and supervision, do they not? A Yes, they do.

Q And you do not know whether either of them or both contacted the employees of Gissel first in January, is that what you're saying? A I would not know, no, sir.

MR. BAKER: I'm not sure that I understand the question.

Just a moment, Mr. Jenkins. Are you asking the witness which person was the very first one?

TRIAL EXAMINER: So I understood.

MR. BAKER: Is that your question? Not whether they contacted them at all but which person was number one?

TRIAL EXAMINER: I understood the question to be who was the first Union representative who had contact with the employees or management at this Respondent, is that the question, Mr. Jenkins?

MR. JENKINS: Yes, ma'am.

MR. BAKER: Thank you.

Q (By Mr. Jenkins:) What employees were contacted? A I do not know.

[fol. 32] TRIAL EXAMINER: By the way, just for my information, how many employees are there, approximately?

MR. JENKINS: Approximately 35, Your Honor.

MR. BAKER: That's 35' in the eligible unit, is that correct?

TRIAL EXAMINER: I assume that's not office employees, secretaries, and so forth.

Q (By Mr. Jenkins:) Did you meet with these people, any of the employees at Gissel, yourself, in January?

A I don't believe I did, no.

Q Who did from your Union?

MR. BAKER: I assume—That assumes a fact not yet in evidence, Your Honor.

TRIAL EXAMINER: He says he doesn't know.

Q (By Mr. Jenkins:) You don't know? A I don't know.

Q Now, when you asked Mr. Charles Gissel on the telephone if he remembered you what were you referring to?

A If he remembered my name from the previous hearing.

Q Had you been involved in an election with this Company previously? A Yes.

Q And what was the approximate date of that? A I would not know unless I could see that document that was introduced.

[fol. 33] Q You don't have any idea what year it was or anything? A I would not have.

TRIAL EXAMINER: Was it recently or considerably in the past?

THE WITNESS: As I remember it could have been three or four years.

TRIAL EXAMINER: But it was not in the last, say, 1965?

THE WITNESS: No, no, no.

Q (By Mr. Jenkins:) What was the result of that election? A We certainly must have lost the election but I would have no idea what the vote was.

Q Isn't it a fact that previous to that election you represented to the same Mr. Gissel at this same Company that your Union represented a majority of employees when in fact as a result of a Board conducted election the employees voted overwhelmingly against your Union?

MR. BAKER: Now, I object. This might well be two legitimate questions but to combine them the way Mr. Jenkins did is not a legitimate question, plus it calls for a conclusion that simply because employees voted against the

Union that the Union did not represent a majority at the time a demand was made. I think to that extent the question is objectionable.

TRIAL EXAMINER: Break down your question.

MR. JENKINS: Could the reporter read it back for me?

(Question read.)

[fol. 34] Q (By Mr. Jenkins:) I'll ask you the same question in two parts, Mr. Spencer. Isn't it a fact that before the last election held at this plant you represented to Mr. Gissel that a majority of the employees were represented by your Union? A We had a majority of employees signed on applications and I made that representation as a fact.

Q Right. Isn't it a fact that when the Board came in and conducted an election at this plant an overwhelming majority of these employees voted against your Union?

A That is a fact which I also explained in my letter to Mr. Gissel in objection to another at this time.

Q So you had these facts in mind when you asked Mr. Gissel on the telephone if he remembered you, didn't you?

A I had the facts in mind that the name he should have remembered from the election.

Q And the events surrounding the name? A I was only interested in if he knew who I represented.

Q I didn't ask you what you were interested in but what your state of mind was at the time when you called him or do you remember?

MR. BAKER: I think I'm going to object. I don't know what the materiality of his state of mind—

TRIAL EXAMINER: I assume he was aware of the fact which he has conceded.

MR. JENKINS: I'll reframe it.

[fol. 35] Q (By Mr. Jenkins:) And you make the same representation to Mr. Gissel in this phone conversation involved in this case with respect to your representing a majority of the employees that you had represented in the last case, didn't you? A The intention was the same whether it was the same statement or not I don't know, but the intention was the same, yes, sir.

Q Now, Mr. Spencer, when you followed up this first phone conversation with your letter of January 22nd, Ex-

hibit 2, you received a letter dated January 26, Exhibit 3, from Mr. Gissel, did you not? A Yes. May I see it.

(Document handed to witness.) A (Continued) Now, what was the date?

Q The date of the Company letter to you I'm referring to was January the 26 of 1965, designated General Counsel's Exhibit 3. A Yes.

Q Now, in this letter of January the 26th, you were advised at that time with respect to the Company's contention as to an appropriate bargaining unit, now, I believe this is in the fourth paragraph of that letter, were you not? A It refers to truck drivers, yes, sir.

Q Now, in any subsequent letter of reply to the Com-[fol. 36] pany did you ever state the position again of your Union on this point or reply to the letter of January 26th with respect to the appropriateness of the bargaining unit? A No, not to my recollection.

Q Now, in this same letter of January 26th, it was pointed out to you in the last paragraph thereof about the rights to seek a petition for an election to determine whether or not you really represented a majority of these employees, was it not? A I think the letter speaks for itself.

Q Right. I want to be sure that you read the letter and understood when you came in you—

MR. BAKER: Again, the letter is the best evidence. It really doesn't make any difference what Mr. Spencer understood the letter to be.

MR. JENKINS: Very well. I'll accept his statement that it speaks for itself.

Q (By Mr. Jenkins:) Now, after receiving that letter or at anytime before or after you never did file a petition asking for an election to determine whether or not your Union really represented a majority did you?

MR. BAKER: Objection. It's immaterial.

TRIAL EXAMINER: Overruled.

THE WITNESS: We did not.

Q (By Mr. Jenkins:) And the reason you did not is [fol. 37] because you had tried that route once before in an honest Board conducted election and lost and now you would try a different tact, wouldn't you? A The reason

we took this route was explained in a subsequent letter that all the interrogation, illegal interrogation that took place on the part of the Company prior to the election previously held taught us that we could never have a fair election at Gissel's again, yes, sir.

Q Now, the procedure which you are using of alleging threats and so forth like that is the same as you are using in all of your cases in this area, is it not?

MR. BAKER: Objection. It's immaterial. The only case under consideration here is Gissel Packing Company, Inc.

TRIAL EXAMINER: Sustained.

Was there any petition filed by the Company?

MR. JENKINS: No.

* * * *

[fol. 39]

KARL H. GISSEL

a witness called by General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q Would you please state your name and address for the record? A Karl Gissel, 615 Jefferson Avenue.

Q Is it Karl H.? A Karl H.

Q Are you commonly known as Charles Gissel? A Yes.

Q Do you sign your name as such? A No.

Q You've never signed your name as Charles? A No. I sign my name as Karl.

Q Not even in parenthesis? A No.

[fol. 40] Q Do you normally sign correspondence that you send out? A No, sir.

Q Someone else signs your name for you? A No, sir.

Q You sign your own name? A Yes, sir.

Q I'll show you what's been marked for identification and received in evidence as General Counsel's Exhibit 3, which is a letter bearing the name K.H. Gissel, in parenthesis Charles. Is that your handwriting? A No. That's my handwriting here.

Q This is not your handwriting? A No. Everyone in the plant calls me Charles.

Q I see. You don't know who would have put that in the letter? A No. I'm called by Charles by everybody except people like you and the doctor and things like that.

Q Do you prefer that I call you Charles? A It makes no difference.

Q It would be much easier for me because I know you as Charles rather than Karl. What is your position with the Respondent herein? A I'm shipping clerk and buyer.

[fol. 41] Q Shipping clerk and a buyer? A (Nods.)

Q Do you have any duties as a supervisor? A Just in the shipping room.

Q Just in the shipping room? A And in the pickling room or the curing section.

Q What are your duties in the pickling room or the shipping room? A Well, I watch the boys in the curing room cure the bacon and hang it right and tell them when to cure it. In the shipping room I see that the orders are filled and see that I have stuff to fill them with.

Q Do you hire any people? A Yes.

Q Hire the employees? A I hire the employees for my departments.

Q Discharge them? A Yes, sir.

Q You have in fact discharged them? A I have my employees, yes.

Q You discharged Mr. Mount and Mr. Frye? I'm just looking for their first names. A No, sir, I did not discharge them.

Q Mr. Herbert F. Mount, Jr. and Jerry Lee Frye, you did not discharge them? A No.

[fol. 42] Q Who did? A They quit.

Q Sir. A They walked off the job.

Q I see. Well, they reported back to work, did they not, on Thursday morning? A After walking off the job for me and then going to work on another job, yes.

Q I see. You ordered them to leave the plant or that you would call the law, is that not correct? A After they got to raising hell, yes.

Q You told them that they were fired? A No, sir. I told them they had quit.

Q But they were ready—But they were there ready to go to work? A Ten minutes late.

Q You would not permit them to go to work? A No, sir, they didn't ask me to go to work; they just walked in.

Q And asked for their timecards, did they not? A They came in the office and asked what's the matter. I told them they had quit.

Q They asked for their timecards, did they not? A Yeah, they asked for their timecard and I told them they had quit; they walked off the job on Wednesday at 11:30, [fol. 43] and went to work on another job.

Q And then they wanted to go work and you ordered them to leave the plant, is that true? A I didn't order them until they got to raising hell.

Q You said you had the police on the phone at that time? A I would if they had started trouble, they were trying to start trouble.

Q Didn't you fire Elisha Watts? A No, sir, I had nothing to do with Mr. Elisha Watts.

Q Mr. Herbert Gissel fired him, is that correct? A I think he fired him on orders.

Q From whom? A From Mrs. Gissel because he came in the office and tore Mrs. Gissel up.

Q Who is Mrs. Gissel? A She's the president.

Q Is that your mother? A Yes.

Q What's her name, R.E. Gissel? A Yes.

Q And then pursuant to her orders Mr. Herbert Gissel fired Mr. Watts, is that correct? A From what I can find out. I wasn't there the day it happened in the morning. I came in after it happened.

[fol. 44] Q Where does Mr. Herbert Gissel work? A He works in the sausage room.

Q He's the supervisor of the sausage room? A Yes.

Q He can hire or fire employees in his department? A In his department.

Q He's also listed as a vice president of the Company, is that correct? A Yes. The whole family is.

Q Now, I believe you stated for the record you had approximately 35 employees. A Approximately, maybe 40, 35 to 40.

Q I see. Who is Mrs. R.E. Gissel? That's your mother, the president of the Company, is that correct? A Yes.

Q Who is E.W. Gissel? A That's my youngest brother.

Q Is he an officer in the Company? A Yes, sir.

Q What's his position? A He's in the slaughter house.

Q He's a vice president? A Yes, sir.

Q Who is H.I. Gissel? A Who? H.L.?

[fol. 45] Q I'm sorry, H.L. A H.L., that's Herbert.

Q He's a vice president? A Yes.

Q And K.H. is you? A Yes.

Q You're a vice president. Who is A.L. Closterman?
A That's my sister.

Q What's her position with the Company? A Secretary-Treasurer.

Q Does she have the right to hire or fire or discipline employees? A Yes, sir.

Q And she did in fact write a letter to a Mr. Herbert Mount where—That's Alfreda L. Closterman? A Right.

Q Who is H.B. Martin? A Bookkeeper.

Q Bookkeeper? A Yes, sir.

Q Works in the office? A Yes, sir.

Q And Harriett Curtis? A Well, I expect you'd call her a clerk.

[fol. 46] Q Does she work in the office? A She works as one of them, yes.

Q And Edith Lewis? A That's my sister.

Q What does she do? A She works in the office.

Q Does she have a son by the name of Terry? A Yes, sir.

Q Does he work there? A Yes, sir, part-time.

Q Before or after school? A After school and sometimes in the summer.

Q Where is he going to school? A Huntington High School.

Q How old is Terry? A Seventeen, I believe.

Q Is he working there now? A Yes.

Q Edith Lewis is vice president, is she? A That's right.

Q Pardon? A That's right.

Q Does Edith have another son? A Yes, sir.

[fol. 47] Q What's his name? A Eddy.

Q How old is Eddy? A I believe he's 21 or 22.

Q Does he work at the plant? A Yes.

Q Regularly, full-time? A Yes.

Q What's his position? A He works and he's a sort of assistant foreman or, well, like that.

Q Assistant foreman? A Yes. I tell him what I want done and I go somewhere else and so something else.

Q And he sees that it's done? A Yes, sir.

Q Does he have a right to discipline employees if they don't obey his orders or your orders through him? A Yes, sir.

Q He can send them home? A Yes, sir.

Q He can fire one? A Well, I never gave him that privilege.

Q Does he have the authority to effectively recommend? If he told you that an employee had refused to [fol. 48] follow his orders and suggested that that employee be fired, would you act upon his recommendation?

A I would check with the employee first. I'd talk to the employee before, he's been recommended before.

Q When he recommended that somebody be discharged did you in fact discharge him at his recommendation? A No, I talked to them and we straightened things out.

Q You didn't fire them? A No, I laid them off.

Q You've laid them off? A I laid a couple off, yes.

Q He recommended discharge and you would mitigate the penalty by just laying them off? No, we talked it over. We would talk together. He's got a hot temper and he recommended firing so I would talk to him and we would straighten it out and lay them off.

Q You talked to Lewis? A Eddy, yes.

Q You talked to him and straightened it out with him?

A Yes, and then we would talk to the employee.

Q I see. Upon his recommendation you would then go to—Upon his recommendation that the employee be discharged the two of you would go talk to the employee, is that correct? A Yes.

Q Who is—it looks like L-e-o-r-i-s Gissel? A That's [fol. 49] my sister-in-law.

Q What position does she hold in the Company? A She doesn't hold any position. She's a foreman in the weiner skinning room and bacon slicing room.

Q She's a foreman just as you're a foreman and Herbert is a foreman? A In her department.

Q And has the same responsibilities? A In her department.

Q And has the same responsibilities as you do? A Yes.

Q As you occupy in your department? A Yes.

Q As far as you explained in your department? A Yes.

Q Who is Siddy Caldwell? A She's a girl that works in the bacon room or skinning room.

Q Is she any relation or relative of yours? A No, sir.

Q She's just an employee? A Just an employee.

Q What about Nell Charles? A She's an employee.

Q Works in what room? A With Siddy.

[fol. 50] Q In the bacon room? A Bacon room.

Q How about Evelyn Collins? A She works in the same room.

Q And Emogene Ellis? A Same room.

Q Just an employee? A Yes.

Q How about Alfreda Hutchison? A She's my niece.

Q What does she do? A She works in the same work.

Q Is she a supervisor? A When her mother isn't there.

Q Her mother is? A Leoris Hutchison.

Q She takes over when her mother isn't there? A Yes.

Q What authority does Alfreda have? A Well, she would probably have about the same authority as her mother would; when her mother isn't there.

Q She could hire and fire and so forth? A I think so, yes.

Q How about C.P. Adkins? A C.P., I don't know his [fol. 51] position from his name.

Q Cordell? A I don't know initials, C.P.

Q Could it be Cordell? Do you have a Cordell? A Yes. It's possible. We have a Cordell Adkins.

Q What does he do? A He works in the boning room.

Q Just an employee? A Yes.

Q How about K.R. Adkins? I believe he's—that's Kenneth or Kenny? A He's an employee.

Q And L.W. Bailey? A He's an employee.

Q Do you know what he does? A He works in the sausage room.

Q How about D.F. Billups? A Offhand I don't know that one.

Q J.J. Bonham? A He works in the slaughter house, in the boning room.

Q What does he do? A An employee.

Q Just an employee. I.H. Caldwell? A He's an employee.

[fol. 52] Q George Collins? A Employee.

Q R.L. Curry? C-u-r-r-y? He may be gone now. A I don't remember.

Q Ronnie Curry, I believe his name was, or goes by the name of Ronnie? A I can't place that one.

Q Do you know an Earl Fortner? A He works in the sausage room. He's an employee.

Q Francis Fortune? A He's an employee.

Q And L.R. Hutchison? A That's my niece's husband.

Q What does he do? A He works in the sausage room.

Q As what? Is he a foreman? A He's sort of assistant.

Q What rights or responsibilities does he have? A He takes over when my brother Herbert isn't there.

Q Does he have the same authority that Herbert has, would you say, when Herbert's not there? A I don't know. I don't know if Herbert gave him that authority or not.

Q Is Herbert absent a good deal? A Not too often, no.

[fol. 53] Q How much of the time would you say Herbert wasn't there? A Oh, he's there most of the time. Maybe once a month he'll take a day off or evening off or something.

Q And then L.R. Hutchison would be in charge? A Yes.

Q He'd run the place? A Uh-huh.

Q What about—it looks like I.R. Hysell? A Lawrence?

Q I can't see. It's I. or something Hysell. A It would be L.

Q It might well be L. A Yeah, that would be Lawrence, I expect.

Q What is he? A He works in the pickling room. He's an employee.

Q He's an employee. What about R.H. Hysell? A He's an employee.

Q And J.K. Johnson? A Employee.

Q D.C.Kidd? That's Donald. A He was an employee.

Q He's not there now? A No.

Q Was he fired or discharged? A No, he quit.

[fol. 54] Q Do you know when he quit? A Oh, I believe approximately two months.

Q Two months ago. A (Nods.)

Q Sometime in April or May, maybe June? A April, I believe. I'm not sure.

Q What about H.C. Lewis? A H.C.? Let's see, I named Eddy Lewis and Terry Lewis, haven't I?

Q Yes. A I don't know offhand unless it would be either Terry or Eddy. I know their initials are not that. Harold C.?

Q Harold C., is it? A It would probably be Terry.

Q That's Terry? A His name is Harold.

Q I see. He's a high school boy? A Yes.

Q Has he worked there after school, you say, or does he just work in the summer? A Sometimes he works in the summer. This is the first time he's worked most the time. He came after school and worked an hour or so, sometimes.

Q What would he do? What does he do? A Help fill [fol. 55] orders or he would clean up. Come in around four and work till five.

Q How many days a week? A Well, we try to get him in five but he would only come in one or two. Just like any other kid.

Q Just like any kid that's part of the family? A Yes.

Q Thank you, sir. C.F., I guess, or C.E. McComas, Jr.? It looks like C.F. McComas, Jr., Carl McComas?

A Oh, he's an employee.

Q And E.B. Maynard, I guess this is. A He's an employee.

Q E.B. Maynard, Jr.? A Uh-huh.

Q Donald Meadows? A He was an employee.

Q He was discharged? A No he quit. He walked off.

Q When was that? Do you recall? A No. I believe, I think I was on my vacation when he quit.

Q When were you on your vacation? A In June.

Q In June? A Uh-huh.

[fol. 56] Q J.T. Mollohan? A That would be Tommy Mollohan.

Q Well, there's a W.R., and a J.T. A Well, it's Tommy. Tommy hasn't been there for six, seven, eight months, I believe.

Q Was he on January 22nd, 1965? A I could not say.

MR. BAKER: May I have this marked for identification General Counsel's Exhibit 9, please?

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit No. 9 for identification.)

Q (By Mr. Baker:) I'll show you what has been marked as General Counsel Exhibit 9 for identification and ask you is this a list of everyone on the payroll as of January 22nd, 1965? A There may be one or two—this Robinson I can't place him.

Q Do you know, just from viewing this list, does it appear to be a list prepared by you and submitted perhaps to Mr. Jenkins or prepared in your office? A It might have been prepared by the office, yes.

Q Do you have some sort of a—I don't know if that's an Addressograph. A Yes, we have an Addressograph.

Q With your name? Would—A Yes.

[fol. 57] Q —this material sometime indicate your name? A Yes.

Q Addressograph machine? A Yes.

Q Would you say that's an Addressograph plate imprint? A I don't know. I don't see the Addressograph number.

Q But you do have such? A Oh, we have one, yes. We have for addressing to customers.

MR. BAKER: Your Honor, at this time, I move that General Counsel's Exhibit 9 be received into evidence. I still think—

TRIAL EXAMINER: It's a list of employees on the payroll as of a certain date?

MR. BAKER: As of January 22nd.

MR. JENKINS: No objection.

TRIAL EXAMINER: It will be received.

(Thereupon, the document heretofore marked General Counsel's Exhibit No. 9 for identification was received in evidence.)

MR. BAKER: I think the record should indicate a little more the names become—or some of them are not legible and apparently the list does include everyone on the payroll.

TRIAL EXAMINER: Very well. Let's move along as fast as we can.

MR. BAKER: Yes, ma'am.

Q (By Mr. Baker:) Tommy Mollihan you say is an [fol. 58] employee? A He isn't now; he was, but when he quit I don't know. I'd have to look the record up on that.

Q Well, you have no reason to doubt I assume that as of January 22nd he was on the payroll, of the date of this list? A I wouldn't say until I looked the record up.

Q What about W.R. Mollihan? A He's still there.

Q He's an employee? A Yes.

Q What does he do? A He's the foreman of the boning department.

Q Foreman of the boning department? A Yes.

Q R.D. Moore? A He's an employee.

Q There's W.D. and R.D., I think. A Both employees.

Q What department do they work in? A One of them—let's see. Give me the initials again.

Q R.D. and W.D. A W.D. is working in the boning and slaughter house department. Now, he was in my room until this week. And Rush, or R.D., is, well, I don't know what you'd call him. We use him for everything.

He's not a maintenance man. He fixes things. He's not a mechanic. He helps the mechanic. He helps in the ship-
[fol. 59] ping room. He helps wherever a man is needed.

Q Is he a relative by any chance? A No.

Q Sort of jack of all trades? A Yes.

Q How about Dewey Parsley, Jr.? A He was in the slaughter house, in the cutting room, but I think he quit last week.

Q Last week? A Uh-huh.

Q How about Curtis Queen? A He's a butcher.

Q What about P.D. Rowe? A He was in the boning and killing floor. He quit Monday.

Q Monday? A Uh-huh.

Q J.M. Vance? A He's in the slaughter house; sometimes the cutting room.

Q Elisha Watts? A He was in the boning room and slaughter house and he's not there.

Q He's the one that Mr. Herbert Gissel discharged on orders, I believe? A He is the one that was discharged. Now, I wouldn't say Herb did it because I wasn't there.
[fol. 60] Q R.B. Simon? A He works with me in the shipping room.

Q Is he a foreman and a supervisor? A He's a supervisor.

Q He has the same authority you do? A Yes, he and Eddy both.

Q Eddy who? A Lewis.

Q Oh, I see. All right. What about J.I. Ellis? A Ellis? Would that be John?

Q J.I., it could be John. It's the only Ellis that's here. A If it's John he was a truck driver but he hasn't been there, he walked off, oh, I don't know, five, six, seven weeks ago. He just didn't show up any more.

Q How about R.B. Lewis? A R.B.?

Q That's Terry's brother, isn't it?

TRIAL EXAMINER: Is this he?

THE WITNESS: R.E., isn't it? That's Roman.

Q (By Mr. Baker:) R.E., is it? A Probably Roman Edward. That's Edward's name.

Q He's a supervisor in the shipping room, too? H.F.

Mounts, Jr., that's Herbert Mounts, isn't it? A That's right.

[fol. 61] Q One of the alleged discriminatees involved in this case? A Yes.

TRIAL EXAMINER: You skipped Mr. Frye.

MR. BAKER: I'm sorry.

TRIAL EXAMINER: Maybe you wanted to, I don't know.

Q (By M. Baker:) J.L. Frye is also the other discriminatee, alleged discriminatee here? A Yes.

Q J.P. Robinson? A Oh, I know who he is, yes, he worked—John—I think he worked about two months, then he got to the place you couldn't count on him any more and then he just didn't show up.

Q But he was working there on January the 22nd? A I think so, yes.

Q S.H. Rowe? A He's an employee. He's still there.

Q What department is he in? A He works in my department.

Q J.B. Scott? A He was an employee. He isn't there any more.

Q And Clifford Carley? A He's a sales supervisor.

Q Sales supervisor? A Yes.

Q Over the route salesmen, drivers, and so forth. He [fol. 62] can hire and fire, I take it? A Yes.

Q W.W. Boyer? A He's a one of the salesmen out of the truck.

Q N.A. Gibson? A He was a peddler.

Q He's quit? A Yes. he quit.

Q When did he quit? A About three or four weeks ago.

Q J.B. Harless? A He's a peddler.

Q And T.I. Jordan? A He's a car salesman in Logan.

Q What? A Car salesman. He sells from a car.

Q From a car— A He's not selling cars.

Q —meats out of a car? A Right.

Q He goes and takes orders nad someone else delivers it, is that right? A That's right.

Q What about C.R. Kitchen? A He was a peddler.

[fol. 63] Q Let's go back here to Jordan. You say he's a car salesman? A He takes advance orders.

Q Does he ever do any work in the packing house? A No. He lives in Logan.

Q Lives in Logan? A Yes.

Q He stays there all the time? A Yes.

Q He just calls on customers as a salesman, is that correct? A That's right.

Q And takes orders and sends them in and they're delivered? A Yes.

Q How is he paid, do you know? A He's salary and commission.

Q What about these peddlers that you talked about, how are they paid? A Salary and commission.

Q Same as this man? A Right.

Q Same as Jordan? Does Jordan ever have to make deliveries himself? A Not unless the truck breaks down or a customer asks for a special delivery or something, we'll ask him, but I don't believe he's ever done one yet.

Q What about D.R. Kitchen? A He was a peddler.

[fol. 64] Q Peddler. Is he the one that's quit? A Well, they asked him to quit.

Q He was fired? A Yes.

Q When did that happen? A Oh, I' say a month or so ago.

Q All right. And E.M. Osborne? A He's a peddler.

Q C.F. Sprigle? A He's a car salesman in Charleston.

Q He's like Mr. Jordan? A Right.

Q In Charleston? A Right.

Q He lives there? A Lives there.

Q How often does Jordan or Sprigle come into the plant? A Whenever we call them in. We talk to them on the phone every day.

Q How often would you call them into the plant? A Once every month or two months.

Q How about I.E. or L.E. Turpin? A He's a peddler.

Q Now, he makes deliveries, all these peddlers actually [fol. 65] drive the truck, carry the meat in; get into the plant every night and load their own trucks and so forth, is that correct? A They take orders and sell it right off the truck.

Q They're actually peddlers, then? A That's what I said, peddlers, I'm calling them peddlers.

Q Well, that was my mistake. They go out with a load of meat and peddle it? A Right.

Q If they sell out they come back and get more? A That's right.

Q Who loads their trucks? A We help them. They get in the truck and we'll bring all the stuff to them so they can place it where they want it and see that they don't get short.

Q And you say they don't take advance orders or they do take some? A They take a few but most the time they're selling right off the truck. They take advance orders, we fill the advance orders and put it right on their truck.

* * *

[fol. 67] MR. BAKER: The two witnesses in the hearing room are Herbert Mounts and Jerry Lee Fye who are the alleged discriminatees and, of course, as such are permitted to remain in the hearing room under Board Law.

MR. JENKINS: We object to this. These people are not parties to this proceeding and we think it's very highly improper for one of them to sit in here and listen to evidence about this case.

TRIAL EXAMINER: They'll be allowed to remain.

* * *

WOODROW R. GUNNOE

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q Mr. Gunnoe, I show you what has been marked as General Counsel's Exhibit 10A through 10F for identification, which purport to be applications for Food Store Employees Union, Local 347, and ask if you can identify these documents?

(Thereupon, the above-mentioned documents were marked General Counsel's Exhibits 10A through 10F for identification.)

A Yes, these are documents, applications for Food Store Employees Union that were signed in my presence. [fol. 68] Q I'll ask you specifically the document signed by Jessie J. Bonham—is that correct? A That's right.

Q —signed on or about January 21st, was that signed in your presence? A That was signed in my presence.

Q On the date indicated? A On the date indicated.

Q That's General Counsel Exhibit 10A. General Counsel Exhibit for identification 10B, Donald F. Billups, signed on or about January 20th, 1965, was that document signed in your presence? A Yes, it was.

Q General Counsel Exhibit 10C for identification, Samuel Henry Rowe, dated 1/21/65, was that document signed in your presence? A Yes, it was.

Q General Counsel Exhibit 10D for identification, signed by Lewis E. Turpin—Durpin is it? A Turpin, I think.

Q —dated 1/20/65, was this document signed in your presence? A Yes, it was.

Q By Mr. Turpin? A By Mr. Turpin.

[fol. 69] Q General Counsel Exhibit 10E for identification, signed Dewey Parsley, Jr., dated 1/22/65, was that document signed in your presence? A Yes, it was.

Q And General Counsel Exhibit 10F for identification, Sylvana F. Anderson, dated 7/2/65, was this document signed in your presence? A Yes, it was.

MR. BAKER: At this time I offer General Counsel's Exhibits 10A through 10F into evidence.

MR. JENKINS: We don't have a copy of 10F here.

MR. BAKER: Probably not. That was the 7th month, and probably wasn't a duplicate of that. I'll show you the original in your like.

(Document handed to Mr. Jenkins.)

MR. JENKINS: Why would we get a copy of all the ones that were signed in January and not get a copy of the one that was signed in July without a tender of a copy?

MR. BAKER: On, contrary to the implication of Mr. Jenkins there's absolutely nothing sinister involved there. Madam Examiner, it just so happens the copies were furnished the Regional Office at the time the charges were

filed. This copy has been given to the General Counsel since that time.

MR. JENKINS: Why wasn't it submitted for inspection is what I'm talking about before it was offered?

[fol. 70] MR. BAKER: Well, Mr. Jenkins, I didn't realize there wasn't a copy there. There was absolutely nothing sinister. This is the original and you may inspect it at your leisure.

(Document handed to Mr. Jenkins.)

MR. BAKER: And if I have said before, Your Honor, I'm going to say it again, I resent all the innuendo—

TRIAL EXAMINER: Mr. Baker, let's proceed.

MR. BAKER: I want this in the record. Mr. Jenkins does this constantly.

TRIAL EXAMINER: Let's try this lawsuit.

MR. BAKER: --my ethics as an attorney and I don't like it.

TRIAL EXAMINER: Let's try this lawsuit.

MR. JENKINS: Your Honor, we object to General Counsel's Exhibits 10A through F. Their materiality is not shown. They are not properly authenticated. There is an additional ground for objection with respect to 10F. This is some document that apparently was taken on July the 2nd of 1965, I can't see what bearing that could possibly have on this case.

MR. BAKER: Since the Trial Examiner made her decision based upon the time of the demand it's very obvious there was no effort, as a matter of fact, I didn't see the document until I had it identified, there is no intent here nor any effort to get into evidence evidentiary documents that would purport to show something that they aren't. It's clear that this was signed on July the 2nd. It's dated as such.

[fol. 71] TRIAL EXAMINER: Is it necessary to offer?

MR. BAKER: I'm not certain that the majority isn't going to stand or fall on it, true. There are numerous cases, though, where the refusal for recognition has been so blatant that the Board has accepted that type of authorization card. However, I will withdraw General Counsel 10F.

TRIAL EXAMINER: Your offer 10A through 10E will be received.

(General Counsel's Exhibit 10F for identification was withdrawn.)

(Thereupon, the documents heretofore marked General Counsel's Exhibits 10A through 10E for identification were received in evidence.)

MR. BAKER: I have no further questions of Mr. Gunnoe.

MR. JENKINS: No questions.

TRIAL EXAMINER: You're excused. Thank you.

MR. JENKINS: Could I have a copy?

MR. BAKER: This is all we have.

MR. JENKINS: This is the only copy?

MR. BAKER: That's the only copy I have.

MR. JENKINS: All right.

MR. BAKER: It would be possible to get other copies. I just don't have them.

MR. BAKER: Call Mr. Carlton Cass.

By the way, I may have neglected something. I would [fol. 72] like to have Mr. Gunnoe back on the stand just for a moment.

TRIAL EXAMINER: Yes. Mr. Cass, will you step out, please.

MR. BAKER: Pardon me?

TRIAL EXAMINER: Will you ask Mr. Cass to step in the hall?

MR. BAKER: It's really immaterial.

TRIAL EXAMINER: You're still under oath.

THE WITNESS: Yes.

MR. BAKER: I'd just like to ask Mr. Gunnoe's address, and position with the Union.

TRIAL EXAMINER: All right.

THE WITNESS: My name is Woodrow R. Gunnoe, home address, 1019 Smithfield Street, Parkersburg, West Virginia; business address is Post Office Box 2751, Charleston 30, West Virginia. My position is business representative for the Food Store Employees Union, Local 347.

Q (By Mr. Baker:) Mr. Gunnoe, in your position as business representative, would you state whether you participated in the organizing campaign at Gissel Packing Company, Inc.? A Yes, I did.

Q Was it in that capacity that these documents you identified were received? A Yes.

Q Received by you? A That's true.
[fol. 73] MR. BAKER: That's all.

CROSS EXAMINATION

BY MR. JENKINS:

Q Mr. Gunnoe, when did you first begin the campaign at Gissel? A Campaign was begun around the 12th or 13th of January, 1965.

Q On behalf of your Union who was in charge of the campaign? A Mr. Spencer is in charge of all operations. As far as organizing is concerned, there were four of us working on the campaign, actually there was no one in particular in charge of it.

Q Were you in on the planning of the campaign and the details of it? A Yes, basically so.

Q Who were the four people that you referred to? A Jack Brooks, business representative from Charleston; Carlton Cass, International representative from Elkland, Pennsylvania; Jess Spitzer from New Market, Virginia, also an International representative.

Q There has been testimony in this case about activities between this Company and your Union back in either 1960 or '61. Did you participate in those?

MR. BAKER: I'm going to object. I think it's certainly beyond the scope of direct and immaterial at this time.

[fol. 74] TRIAL EXAMINER: Overruled.

THE WITNESS: At that time I did not participate in the organization.

Q (By Mr. Jenkins:) Were you an employee of this same Union at that time? A No, I was not.

Q When did you go to work for the Food Store Employees Union? A December the 11th, 1963.

Q When you say that the campaign began on January the 12th and the 13th of this year, what do you mean by that? Specifically what happened on those at that time or what started to happen at that time? A We started contacting employees, attempting to sign them up on Union application cards.

Q And there was none of this activity began before this date, is that correct? A Well, there had been some ground work laid perhaps a week or two beforehand where we had got some names through maybe shop stewards out of stores or something such as this but as far as actual campaign beginning it was around that time that it actually began.

Q Who was responsible for initiating the interest of your Union in the Gissel plant in January of '65 here? A I would say no one individual. There had been, we had had a few contacts from employees of Gissels, though not direct contacts, they had talked to our shop stewards in the stores, stuff such as this.

[fol. 75] Q Was this about the time that you began in January? A We began in January but the contacts, original amount of contacts were perhaps six months before or something such as this.

Q But nothing formally began, no formal contacts with the Union until January, is that right? A Around some time during the middle of January, the 12th, 13th.

MR. JENKINS: I believe that's all I have.

MR. BAKER: I have nothing further.

(Witness excused.)

CARLTON M. CASS

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q State your name and address for the record? A My name is Carlton M. Cass, Elkland, Pennsylvania.

Q By whom are you employed, Mr. Cass? A By the International Union, Amalgamated Meat Cutters and Butcher Workmen of North America.

Q In your capacity as a—What is your capacity with the Meat Cutters? A Organizer.

Q I assume your capacity as an organizer is organizing, is that correct? A Yes.

Q Have you been involved in any organizing campaigns in Huntington, West Virginia area? A Yes, sir.

Q What was your most recent organizing campaign? A Well, the most recent was the Gissel Packing Company.

Q What did you do as an organizer in that campaign? A Contacted the employees of Gissel Packing and get them to sign application cards for the Local Union.

Q And you did that here? A Yes, sir.

MR. BAKER: Mr. Jenkins, I have seven. Would you mind counting those?

MR. JENKINS: Why don't you just let me see the originals? That will help.

(Documents handed to Mr. Jenkins.)

MR. BAKER: If you want to follow I'll leave the duplicates there.

Q (By Mr. Baker:) Mr. Cass, I'll show you a document that's marked General Counsel Exhibit 10G for identification and ask you if you can identify that document?

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10G for identification.)

A Yes, sir.

[fol. 77] Q How can you identify it? A I was present when the man signed.

Q That man is Winston— A Winston D. Moore.

Q And he signed on or about the 19th of January, 1965? A Yes, sir.

Q It was signed in your presence? A Yes, sir.

Q This is a Union application? A Yes, sir.

Q I show you what has been marked for identification General Counsel Exhibit 10H and ask you if you can identify that document.

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10H for identification.)

A Yes, sir, signed by Daniel-Ellis, on 1-19-65.

Q Was that signed in your presence? A Yes, sir.

Q I show you what has been marked General Counsel Exhibit 10i for identification and ask you if you can identify that? A I can. Signed by Lawrence E. Hysell on January 14, 1965 in my presence at his home.

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10i for identification.)

[fol. 78] Q I show you what has been marked for identification Exhibit 10J and ask if you can identify that.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10J for identification.)

A Yes, James K. Johnson, signed on January 19, 1965, at his home.

Q In your presence? A Yes, sir.

Q I show you what has been marked General Counsel's Exhibit 10K for identification and ask you if you can identify that document.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10K for identification.)

A It's a Union application signed by John T. Mollohan in his home on January 13th, 1965.

Q Is it John T. A Yes.

Q That was in your presence? A Yes, sir.

Q I show you what has been marked General Counsel Exhibit 10L for identification and ask you if you can identify that?

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10L for identification.)

[fol. 79] A This, Francis Fortune signed a Union ap-

lication, signed by Francis Fortune on January 14th, 1965, in my presence.

Q I show you a document marked General Counsel Exhibit 10M for identification and ask if you can identify it.

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10M for identification.)

A A Union application signed by Donald Meadows on the 19th of January, 1965 at his home, in my presence.

MR. BAKER: At this time, Your Honor, I offer General Counsel's Exhibits 10G through 10M, marked for identification, into evidence.

MR. JENKINS: We object to the admission of these documents. The materiality has not been proved and they're not properly authenticated.

TRIAL EXAMINER: They're received.

* * * *

[fol. 80]

JESSIE C. SPITZER

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

[fol. 81]

DIRECT EXAMINATION

BY MR. BAKER:

Q Would you state your name and address, please, for the record? A Jesse C. Spitzer. My address is R.F.D. 1, New Market, Virginia.

Q By whom are you employed, Mr. Spitzer? A I'm employed by the Amalgamated Meat Cutters and Butcher Workmen of North America.

Q What's your position with Amalgamated Meat Cutters and Butcher Workmen of North America? A I'm an organizer.

Q In your capacity as an organizer what work do you perform? A I go out and organize unorganize people, plants, whatever.

Q How do you go about this? A Well, the usual procedure is getting authorization cards signed.

Q Did you engage in a campaign in the Huntington area? A I did.

Q What campaign was that? A On the Gissel Packing Company.

Q Did you, as you state, get authorization cards signed in that campaign? A Yes, sir.

Q Now, Mr. Spitzer, I show you what has been marked General Counsel Exhibit 100 for identification and ask [fol. 82] you if you can identify that document.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 100 for identification.)

A Yes, sir.

Q How do you identify it? A Because by the name.

Q That name is what? A Ivan Caldwell.

Q You were there when? A That was January the 15th, 1965.

Q Was that document signed in your presence? A Yes, sir.

Q It is an authorization for Local 347 to represent this employee's interest in collective bargaining as it states? A Correct.

Q I show you what has been marked as General Counsel Exhibit 10N, and ask you if you can identify that document.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10N for identification.)

A I do. I saw Ralph Hysell and I was present, in fact, the man had agreed to sign only he could not write. He asked if I would write his—

MR. JENKINS: Object. Hearsay.

TRIAL EXAMINER: Overruled.
[fol. 83] MR. BAKER: Go ahead.

THE WITNESS: He asked if I would sign his name and he would put an "X."

MR. JENKINS: Motion to strike. Hearsay.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker:) Did he in fact put an "X?" A Yes, he did.

Q I note there is an "X" on the document, is that the "X" put on by Mr. Hysell in your presence? A Yes.

Q And you signed his name? A Yes, sir.

Q Is this your handwriting? A This is my own writing, witnessed by me.

Q That was put on at the time you signed it? A Yes, sir.

Q I show you what has been marked General Counsel's Exhibit 10P for identification and ask if you can identify that document.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10P for identification.)

A Yes, I do.

Q How do you identify it? A By the name.

Q The name is what? A Siddy Caldwell.

[fol. 84] Q Was that document signed in your presence? A It was.

Q Where? A At her home.

Q And on the date indicated? A January 16th, 1965.

Q I show you now what has been marked for identification General Counsel Exhibit 10Q and ask you if you can identify that.

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10Q for identification.)

A I do.

Q How do you identify it? A By the name.

Q Which is? A Cordell Adkins.

Q Where was the card signed? A At his home.

Q Was it signed in your presence? A Yes, sir, it was.

Q Under—On what date? A January the 18th, 1965.

Q I'll show you what has been marked as General Counsel Exhibit 10R for identification and ask you if you [fol. 85] can identify that document? A Yes, sir, by the name Jerry B. Scott and the date was January 18th, 1965, it should be.

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10R for identification.)

Q That is '64, isn't it? A Yes.

Q Were you present when that was signed? A I was.

Q It was signed on January 18, 1965? A Yes, sir.

Q In your presence? A In my presence.

Q I show you what has been marked as General Counsel Exhibit 10S for identification and ask if you can identify that document? A I do by the name John Vance and in my presence. He signed at his home January 16th, 1965.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10S for identification.)

Q (By Mr. Baker:) I note that was a 4, that was changed, I assume. A Yes, that 5 is right.

Q Now, I show you what has been marked for identification [fol. 86] General Counsel Exhibit 10T and ask you if you can identify that document? A Paul Rowe. This was signed at his home on January 18th, '65.

Q This document I note says '64. It was '65? A It was '65.

Q Were you in Huntington January, 1964? A No, sir.

Q What time had you been in Huntington? A I came in Huntington on the 13th of January.

Q And stayed how long? A I stayed until, I was in the area until February the 9th.

Q And you left? A I left then.

Q Was that your first trip into Huntington? A It was.

Q You hadn't been there before January 13th, 1965? A No, not on any programs.

Q I show you what has been marked for identification General Counsel Exhibit 10U, and ask you if you can identify it. A This is Emogene Ellis. I recognize by the name and I signed her up at her home and that was January the 19th, 1965.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10U for identification.)

Q I show you what has been marked for identification [fol. 87] General Counsel Exhibit 10V and ask you if you can identify that document. A Carl McComas, yes, I do.

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10V for identification.)

Q Where was that signed? A That was signed at his home. It was January the 18th, 1965.

Q Was that the first time you had ever been to see McComas? A Yes, I guess so, as far as I know. I'm sure it was.

Q I'll show you what has been marked as General Counsel Exhibit 10W for identification and ask you if you can identify that document. A Yes, sir, this was John Ellis and this was not signed at his home. It was signed outside of Tip's Tavern, I believe it's called uptown, in my presence, in my automobile.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10W for identification.)

Q And on the date of? A January 18th, '65.

Q I'll show you what has been marked for identification General Counsel Exhibit 10X and ask you if you can identify that? A Yes, sir. Ronnie Lee Curry, that was signed at his home, January 18th, 1965.

[fol. 88] (Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10X for identification.)

Q Was it in your presence? A In my presence.

Q I show you what has been marked for identification General Counsel Exhibit 10Y and ask you if you can identify that document. A Yes, sir. Now, Nell Charles, it was signed at her home by her in my presence on January the 18th, 1965.

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10Y for identification.)

Q I show you what has been marked for identification General Counsel Exhibit 10Z and ask you if you can identify it. A Yes, sir. It's Lowell Bailey and he signed that at his home and that was in January—on January 14, 1965, signed in my presence.

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10Z for identification.)

MR. BAKER: At this time I would offer into evidence General Counsel Exhibits 10N through 10Z for identification.

MR. JENKINS: The Respondent makes the same objection as was previously made to the other exhibits marked General Counsel Exhibit 10.

[fol. 89] TRIAL EXAMINER: They will be received. You know you have an automatic exception.

[fol. 90] CROSS EXAMINATION

BY MR. JENKINS:

Q Mr. Spitzer, who was with you when you interviewed Adkins? A Adkins?

Q Yes. A Cordell Adkins?

Q Yes. A I think Mr. Don Kidd.

Q Are you sure of that? A Yes.

Q Who was with you when you interviewed Mr. Hysell? A Hysell?

Q Yes. A John or Ralph? Ralph?

Q Yes. A There was no one.

[fol. 91] Q Who was with you when you interviewed Jean Caldwell? A I think—it looks like Jean on there. I believe it's Ivan. Anyway, there was no one with me as far as I—she was in her home.

Q Were you personally acquainted with her previous to this occasion? A No.

Q Were you personally acquainted with Mr. Hysell previous to this occasion? A No.

Q Were you personally acquainted—Who was with you when you interviewed Sidly Caldwell? A There was no one with me.

Q Were you personally acquainted with him? A No.

Q Who was with you when you interviewed Jerry Scott? A No one.

Q Were you personally acquainted with Jerry Scott? A No.

Q Who was with you when you interviewed John Vance? A There was no one.

Q To save time, who accompanied you on interviewing any of the other persons that you have testified about here? A Well, Don Kidd as far as I know, any of those that I've—

[fol. 92] Q Do you know on which occasion Mr. Kidd was really with you? A I know that occasion.

Q On which occasion? Adkins? A Yes.

Q Now, other than the Adkins situation, was anyone with you on any of the other interviews which you had? A Not on any of those that I submitted.

Q Were you personally acquainted with any of these people? A No.

Q Had you ever seen them before that day? A No.

Q Have you ever seen them since that day? A Yes.

Q Which ones have you seen since that day? A At the time I was in the area I kept in pretty close contact with the people.

Q Which ones specifically did you see and on what dates did you see them after your initial interview with them? A Well, I don't know if I can get the correct date but within a time after I signed they, why, I went back to see several of them.

Q You don't know which ones you went back to? A I think the two Caldwells, Don Kidd. That's all I can recollect right now.

[fol. 93] Q Describe for me John Ellis, his appearance?

* * *

A It's hard to describe each and every face that I saw

and signed since he's not the one I revisited since the signing of the application.

Q Can you tell us what he looks like at all? A As far as I know he was a younger man.

Q What color was his hair? A I couldn't describe his hair.

[fol. 94] Q Can you estimate his age? A Not precisely, no.

Q Can you describe him in any other way physically?

MR. BAKER: Your Honor, I submit that this is entirely out of order.

THE WITNESS: I've been away from the scene—

[fol. 95] THE WITNESS: I can't describe him specifically. I remember the situation surrounding the signing of him. It was a brief period of time, within five minutes. And it's six months apart, many places I've been since that time. Many of the faces I do recognize that I saw then.

Q (By Mr. Jenkins:) Can you describe Ralph Hy-sell? A Yes. He's a short fellow and I can remember this since he could not write his name. He asked me to write it. He's a short fellow.

Q Can you describe him in any other way? A What other way?

Q Is there anything else that comes to your mind about him in describing him? A Not specifically.

Q How about Paul Rowe, can you describe him? A He was a young man, too. I can't describe him. Not any more just than he was one of the ones that I was with briefly, long enough to sign an application.

Q Now, in talking to Mr. Rowe what did you say to him in connection with the signing of this application? A I told him that we were organizing this plant or attempting to and in order to do that we had authorization cards that would be signed by the employees in order to—and if we reached a majority that we would ask for recognition.

Q What else did you tell him? A I don't recall everything that was said in respect to the Union. That is what I told him.

Q Did you advise him of his rights under the Labor Law not to join the Union? A If the question had come up I would have.

Q I didn't ask you that. I asked you did you specifically advise him of his rights. A I told him he had the right to belong or not to belong.

Q You told Rowe this? A Yes.

Q Did you make this statement to Jerry Scott? A I suppose I made it to all of them.

Q You told each one of these employees that they had a right not to belong to the Union if they didn't want to? A I said, "It's your right to belong to the Union or it's your right not to. The law says so."

Q You made this statement to Hysell, the two Caldwells, Adkins, Scott, Vance, Rowe, Ellis, McComas, John Ellis, Ronnie Curry, Nell Charles, Lowell Bailey, to each one of those people you made that statement? A I couldn't specifically say that I said it but they signed the cards in a brief time.

Q This is not what I asked you. My question to you is did you make this statement to each one of those named individuals? A Yes.

[fol. 97] Q All right. What else did you tell each one of them? A I don't recall anything else pertaining to the Union. Either they signed or they didn't sign. The people, when they signed, that was it.

Q Now, did you approach some employees who did not sign? A I don't recall that I approached any that didn't sign.

Q Every employee which you approached— A I said I don't recall.

* * *

Q What purpose did you state? A That we were going to, if we got a majority of the cards signed, that we would ask for recognition.

* * *

[fol. 98] Q What, if anything, was said to any of these employees about working conditions as an inducement to get them to sign these cards? A Well, I would say yes, there was some.

Q Well, to whom? A Improvements in wages and working conditions.

Q What did you promise them specifically and to whom? A Nothing specifically.

Q Whom did you make these statements to, which ones of these people? A Each and every one of them.

[fol. 100]

HERBERT FRANKLIN MOUNT, JR.

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q Please state your name and address for the record.

A Herbert Franklin Mount, Jr., I live at 121 Marion Street.

Q Where is that? A In Huntington.

Q Have you ever been employed by Gissel Packing Company? A Yes, sir.

Q When did you first working for Gissel? A It was about April, 1963.

Q Who hired you? A Charles Gissel.

Q What was your job there? A Well, I was to work in the shipping department as far as I knowed, I mean that was where I went to work at.

Q Did you work there the whole time you were there? A Well, yes, sir.

Q How long did you work for them, Gissel Packing? A A little better than two years.

Q When did you leave? A It was about December, '65.

[fol. 101] Q It couldn't have been December— A Sixty-four.

Q Did you come back after that? A Yes, sir.

Q Did you leave again? A Yes, sir.

Q When was that? A About, it was about a month or two afterwards.

Q Would it have been in April, the 22nd of April was that the date you left? A Yes, sir.

Q All right, now, while you were there were you ever approached by anyone to join a Union or sign a Union card? Did you sign a Union card? A Yes, sir.

Q Where did you get the card that you signed? A He brought it to my house.

Q Who did? A Red.

Q Red Cass? A Yes, sir.

Q The man who is an International representative who was in the room with you? A Yes, sir.

Q I show you what has been marked as General Counsel's Exhibit 10AA for identification and ask if that's your signature?

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10AA for identification.)

A Yes, sir.

Q Herbert F. Mount, Jr.? A Yes, sir.

Q You signed it on or about the date indicated January 19, 1965? A Yes, sir.

Q Did you get any cards signed yourself? A Yes, sir.

Q Who did you get signed up? A John Robinson.

Q I show you what has been marked for identification General Counsel Exhibit 10BB, and ask you if that's the card you got signed? A Yes, sir.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10BB for identification.)

Q With John Robinson's name on there, dated January 20th, 5 it says. Was that January 20th of this year, the day after you signed your card? A Yes, sir.

[fol. 103] Q Where did Robinson sign? Where were you? A At the Gissel Packing Company.

Q Did he sign in your presence? A Yes, sir.

Q He signed, put his name on? A Yes, sir.

Q Did you ever have any conversation with any supervisor at the plant regarding the Union when the Union was mentioned? A With Charles.

Q Gissel? A Yes, sir.

Q Who is Charles Gissel, what's his position if you know? A Well, he was my boss.

Q Directing your attention to the first time—did you have more than one conversation with Mr. Gissel where the Union was mentioned, Mr. Mount? A Yes, sir.

Q Directing your attention as to the very first time that the Union was ever mentioned to you by Mr. Gissel when did that take place? A Well, right after I first went to work.

Q Back in 1963? A Yes, sir.

Q Where did this conversation take place? A Out at the front docks.

[fol. 104] MR. BAKER: Before you go on, Madam Examiner, this conversation will be beyond the 10(b) period, and it's not expected that you would find an unfair labor practice but it is being offered to show the background of this case and the animus on the part of the Employer towards Unions.

TRIAL EXAMINER: Very well.

Q (By Mr. Baker:) You say this was out on the dock? A Yes, sir.

Q Who else was present, if you recall? A Well, I don't think there was anybody.

Q All right. What did Mr. Gissel say to you about the Union and what, if anything did you say in reply?

MR. JENKINS: We object to that, Your Honor. This is not material to any issue before this hearing. I'm not sure I heard the date referred to but I believe it was sometime in 1963.

TRIAL EXAMINER: That's correct.

MR. JENKINS: And we are not prepared to try any case growing out of any testimony or any other thing that goes back outside of the period that's material in this case.

TRIAL EXAMINER: If you need additional time, I refer to ILTWU, Local Lodge 1424, in which the Supreme Court held evidence with respect to events which occurred prior to the six months' limitation period may be adduced to shed light upon events which happened within the limitations, Mr. Jenkins.

[fol. 105] MR. JENKINS: I assume, Your Honor, that in order to protect the record it is not necessary to make a motion to strike this.

TRIAL EXAMINER: That's correct. You have a standing objection. I would like to say to you if you want time in which, if you care to, prepare your answer to this you just ask for it, I'll rule upon your motion when it's made.

MR. JENKINS: To amplify my objection to it, Your Honor, so the record, I'm not arguing with your ruling, I just want to be sure the record is properly protected, this is evidence here that is not material to anything that is set out in either of the complaints and that is the basis for our objection to it.

TRIAL EXAMINER: Very well.

Q (By Mr. Baker:) Mr. Mount, you say this was back when you were hired, you think, some part of '63, is that correct? **A** Yes, sir.

Q And it was out on the loading dock? **A** Yes, sir.

Q What did Mr. Gissel say to you at that time? **A** He told us the shop was non-Union and if we was caught talking to a Union representative we would be fired.

Q When was the next conversation that you had with Mr. Gissel where he mentioned the Union? **A** Well, it was back about September, Buckeye Loan—

[fol. 106] **Q** Of last year? I say was that September of last year? **A** Yes, sir.

Q Do you remember what part of September that was? **A** I believe it was about the first.

Q First of September. All right, what happened on that occasion? Did you say something about Buckeye? **A** Yeah. Buckeye Loan Company, where I had my house loan were about to sue, came out to talk to me.

MR. JENKINS: I can't understand. Buckeye Loan Company what?

THE WITNESS: (Continued.) They came to talk to me because I was behind on my payments.

TRIAL EXAMINER: Something about loan on your house?

THE WITNESS: Yes.

Q (By Mr. Baker:) He was behind on his payments on the loan on his house. **A** And so he called me over to the side and talked to me.

Q That is the man from Buckeye Loan called you over

to talk to you? A Yes, sir. And whenever he left, Charles asked me if it was a Union representative, and I said no, and he did not believe it.

Q What do you mean, he did not believe it?

MR. JENKINS: Objection. Hearsay.

TRIAL EXAMINER: Sustained.

[fol. 107] Q (By Mr. Baker:) What did he say to make you believe he didn't believe it? A He just raised cain and said he thought it was a Union representative.

Q Even after you told him who it was he thought that it was? A Yes.

MR. JENKINS: Objection. This is leading.

TRIAL EXAMINER: Sustained. What did he say?

THE WITNESS: He just said he thought it was a Union representative. I tried to explain to him that it was a Buckeye Loan Company man and he didn't believe it.

TRIAL EXAMINER: After you said it was a Loan Company representative, what did Mr. Gissel say then?

THE WITNESS: Well, not much.

Q (By Mr. Baker:) He said he thought it was a Union representative. Did he say anything else then about the Union at that time? A Well, he's repeated before about if we was caught talking to one that we was fired.

Q How did he say that? A Well, he said, "You god-damned things will go." That's the way he put it.

Q Now, when was the next time that you heard Mr. Gissel mention the Union or say something about the Union? A Well, he was talking out front where we order [fol. 108] meat and stuff.

Q What's at the plant? A Yes. A guy that hauls the cattle in there, Earlie, and he was talking about it.

Q Wait a minute. You say this guy that hauls cattle in, is he an employee of Gissel or do you know? A No, sir, he just hauls the cattle in to them.

Q He owns his truck or something? A I suppose.

Q You say Mr. Gissel was talking to him? A Yes, sir. They were talking about shutting his slaughter house down. He said maybe the Union was doing them a favor, that they could cut the slaughter house out and buy their meat already—have their meat shipped in.

MR. JENKINS: Objection. The time isn't shown. The materiality isn't shown.

TRIAL EXAMINER: When did this happen?

MR. BAKER: I was going to ask him that, Your Honor, but I would like if I may to go ahead and get the—

TRIAL EXAMINER: I suggest you ask the time before you ask the substance.

MR. BAKER: All right.

Q (By Mr. Baker:) When was this, do you remember, say, relative to when you signed a Union card, was it before or after? A Well, it was I'd say about a month [fol. 109] afterwards.

Q After you signed? A Yes, sir.

Q You signed on January 19th. A It would be about February, maybe the first of March.

Q All right, what was he saying? A Well, he said maybe the Union was doing him a favor because they could take and shut the slaughter house down and have their meat shipped in already cut, to do away with the men.

Q Who was he talking to? You say he was talking to this man? A Earlie. There were several present when he was talking.

Q How was he talking, soft or low, loud or low? A Well, about like usually.

Q How does he usually talk? A Mad.

Q Was it loud or soft? A Well, it wasn't loud and it wasn't soft.

Q But you heard it? A Yes, sir.

* * * * *

[fol. 110] Q Will you state whether or not during that time you heard Mr. Gissel talking to another employee about the Union or where he wasn't talking to you but a conversation that you may have heard? A Well, I heard him talk to Rush Moore once about it.

Q When was that? A Well, that was, I believe it was along in March. It wasn't too long after we had signed the Union cards.

Q Where did this conversation take place? A Oh, they was getting ready to go over to the garage.

Q Was it in the plant? A Yes, sir, out front just as they started to go over to the garage.

Q Was anybody else present at that time? A I believe Ken Adkins was, I'm not sure.

Q Now, you say he was talking to Rush Moore? A Yes.

Q Who is Rush Moore? A He works at the plant, at the garage.

Q Is he the man that does a little bit of everything sort of jack of all trades around there? A Yes, sir.

Q And then you heard Mr. Gissel talking to Mr. Moore? A Yes, sir.

Q What did he say to Mr. Moore? A He told him to [fol. 111] find out all he could about the Union, who had signed the cards, and to report back to him.

Q Back to Mr. Gissel? A Yes, sir.

Q Now, were there any Union meetings involved in this campaign? A Yes, sir, there was one.

Q Just one? A Yes, sir.

Q Do you remember when that meeting was conducted? How long before you were fired was the meeting conducted?

MR. JENKINS: Objection. The statement about "fired," is an improper conclusion.

TRIAL EXAMINER: Before you left the Company.

MR. BAKER: Yes, all right.

THE WITNESS: It was four days, it was about Easter.

Q (By Mr. Baker:) About Easter? A Yes, sir.

Q I believe you stated you left on April the 22nd, or something, it was about four days prior to that? A Yes, sir.

Q What day of the week was it on? A Sunday.

Q What time of day? Are you sure it was Sunday or was it Saturday? Did you work that day? A Yeah, it [fol. 112] was Saturday for we had worked that day. It was Saturday at 2:00 o'clock.

Q All right. And that was in the month— A Sunday I believe was Easter.

Q The next Sunday was Easter. A (Nods.)

Q I mean the Sunday following that day. A Yes.

Q That would have been April 18th, or Easter. So that meeting was on April 17th, and then you were fired the following what—

MR. JENKINS: Objection.

Q (By Mr. Baker:) —you left the employ of the Company? A Thursday.

Q That would have been April 22nd. Did you attend this meeting? A Yes, sir.

Q Where was it held? A At the Hotel, Fourth Avenue, Governor—

Q Cabell? A Cabell.

Q All right. Now, before you went to the meeting do you have any reason to believe that the Company knew that you were at the meeting? A Yes, sir.

[fol. 113] Q How is that? A Well, it was a couple of days before, Charlie Hutchison came in and told Charles, asked him—

Q Charles who? A Gissel.

Q Where did this take place? A In the shipping room.

Q Were you present? A Yes, sir.

Q Charlie Hutchison, who's he? A Herb Gissel's son-in-law.

Q And you heard a conversation between Charles Hutchison and Charles Gissel? A Yes, sir.

Q All right. Would you tell the Trial Examiner what Mr. Hutchison said to Mr. Gissel—

MR. JENKINS: Objection,—

Q (By Mr. Baker:) —and what Mr. Gissel said in reply?

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker:) You go ahead and answer. A Charlie Hutchison asked Charles Gissel if he knew there was going to be a Union meeting on Saturday, and he said yes, he knew it before the rest of us boys did, and he said that was all right. He said he was going to have somebody there to call in whoever come.

[fol. 114] Q That's Charles Gissel talking, is that right? A Yes, sir.

Q You say you went to the meeting? A Yes, sir.

Q What did you see when you got to the meeting, if anything? A Terry Lewis in a phone booth.

Q Terry Lewis that's the son of— A Gissel girl. She's Edith.

Q Edith Gissel Lewis? A Yes, sir.

Q Did Terry work at the plant? A Yes, sir, of evenings and through the summer months.

Q Where did you see Terry at the hotel? A In the phone booth.

Q What was he doing? A Calling Alfreda.

Q Who is Alfreda? A Alfreda Gissel or Clost—

Q Is that his mother? A No. That's—She's secretary, I mean the boss, as far as I know.

Q Alfreda Closterman? A Yes, sir, Alfreda Closterman.

Q How do you know he was calling her? A We heard him pronounce her name on the phone.

[fol. 115] Q Then what happened? A Well, then, we shoved the telephone booth door open and he jumped out and ran.

Q That was on Saturday? A Yes, sir.

Q Did you go back to work on Monday? A Yes, sir.

Q Did you have any conversations with Mr. Gissel on Monday? A Yes, sir.

Q Was the Union meeting mentioned? A Yes, sir.

Q When did this conversation take place? A About 11:30 at Gissel's parking lot.

Q What were you doing out at the parking lot at 11:30? A We went to eat our lunch and we asked him if we was—

Q Where was Mr. Gissel? A Sitting in his car listening to the stock market prices.

Q What did you say, you asked him something? A We asked him if we could work that afternoon.

Q And what did he say? A And he told us to wait a few minutes until that was off.

Q The stock market was off? A Yes, sir.

Q Then what happened? A He asked us if we went to the Union meeting.

[fol. 116] And I said no. He said he knew we had for he had been told and I said yes.

Q Then what was said? A He said from then on me and Jerry Frye would come in at 5:30 to work till 11:30 until further notice.

Q What time had you been normally coming to work?
A At six o'clock.

Q How long did you work? A I'd average till 5:00 o'clock but sometimes we'd work longer till we got through.

Q But you started at six in the morning? A Yes, sir. Except for on Wednesday, we worked from 5:30 till sometimes six or seven o'clock.

Q Wednesday was your busy day? A Wednesday.

Q Now, so he told you he wanted you to come in at 5:30 and work till 11:30 and go home until further notice?

A Yes, sir.

Q What did you do that day? A Well, we went home.

Q Did you work the next day? A Yes, sir.

Q What time did you come in the next day? A 5:30 till 11:30.

Q And then you went home? A Yes, sir.

[fol. 117] Q Did you work on Wednesday? A Yes, sir.

Q What time did you come in on Wednesday? A We come in at 5:30.

Q You left at what time? A Just a little bit afterwards. No, it was 11:30 we left Wednesday.

Q Now, do you know of your own knowledge whether Mr. Gissel knew you were leaving on Wednesday at 11:30?

A Yes, sir, we all walked to the car together.

Q That is you and Jerry Frye? A And Charles, we all left for dinner at the same time.

Q Was anything else said to you at that time about leaving at 11:30? A No, sir.

Q What did you do that day? A Well, my father-in-law was working up on Third Avenue in the rear putting in a sewer and so he called down there and asked me if I got off to stop up there and help him to finish up that job and so I was staying with him so I stopped there.

Q You mean you were staying with your father-in-law? A Yes, sir. So I stopped up there to see what he [fol. 118] was wanting. He was wanting me to help him dig out a little bit so he could put the tile in. So me and Jerry Frye stopped and helped him for, I don't know, a couple of hours, and then we was there about an hour when Eddy Lewis and Rush Moore come up and looked in the

garage door where we was standing at and they turned around and left. They didn't say nothing to us.

Q All right, now, did you go to work on Thursday? A Yes, sir.

Q What time did you go to work Thursday? A 5:30.

Q What happened when you got to work that day? A That's when our timecards were gone.

Q You mean they were missing from the timecard racks? A Yes, sir.

Q What did you do then? A We looked around and couldn't find them. We thought maybe we overlooked them so we looked again and they wasn't there, so we walked over to the office and asked him where our timecards had gone.

Q Asked whom? A Charles Gissel.

Q I want you to tell the Trial Examiner just exactly what happened, what Mr. Gissel said when you asked him for your timecards. A I asked where our timecards was at and he said, by God, we had walked off the job. [fol. 119] I said no, we didn't. I said, "You told us to work from 5:30 till 11:30.

He said, "I meant for you to come back in on Wednesday." He said, "You know Wednesday is our busy day."

I said, "You didn't say anything about us coming back."

And he said, "Well, I meant for you to."

And we tried to explain and he grabbed the phone, going to call the law, and then we got—we finally argued around a little bit, try to get our job back, and he told us when we got ready to leave, to take the god-damn Union and stick it up our ass.

Q You said that you had left once before, is that right? A Yes, sir.

Q When was that? A It was about a month or two before. I don't recall the date.

Q Was it before or after you signed a Union card? A It was after.

Q What happened then? A Well, he said we was supposed to have—he come down about 11:00 o'clock and told me we was supposed to have the hams in the pans.

TRIAL EXAMINER: Who is "he?"

THE WITNESS: Charles Gissel. (Continued.) —in the pans and cooking and I said he didn't tell me that. So we got in an argument and he told me I was fired, so I went upstairs and got my knife and things and left. And [fol. 120] he sent Eddy Lewis—

Q Before you were fired, did Mr. Gissel do anything to you at that time, did you have—were there any blows struck or anything? **A** No, sir.

Q All right. He didn't throw any knife at you or anything? **A** No, sir.

Q Now, he told you to leave, is that right? **A** Yes, sir.

Q Where did you go? **A** I went over to Fourteenth Street restaurant, got me a cheeseburger and Coke.

Q I see. Now, what happened then? **A** Well, I was there about half an hour and Eddy Lewis came over and told me Charles wanted me to come back to work.

Q Did he say why Charles wanted you to come back to work? **A** No, sir.

Q Did he say he was feeling any differently or something like that? **A** No, sir.

Q What did you tell him? **A** I told him I didn't know.

Q Did you go back to work at that time? **A** No, sir, it was the following Tuesday.

[fol. 121] **Q** Then what happened? **A** Well, just the same old stuff.

Q What do you mean? How did you happen to go back to work on the following Tuesday? **A** Well, I looked around for another job.

Q Did you call him up and ask him if you could come back to work or did he call you back? **A** Well, he—a couple of the boys said he had sent for me to come back and at last I called and asked if he wanted me to come back.

Q What did he say? **A** He said yes, it was up to me.

MR. JENKINS: Motion for Jenks Act statement.

MR. BAKER: I don't know what Jenks Act statements

are, Your Honor. If he wants to know if we have any pretrial statements, I have those, if that's what he means.

TRIAL EXAMINER: Very well.

MR. BAKER: Is that what you mean, Mr. Jenkins?

MR. JENKINS: You know what I mean, Mr. Baker. We go through this little colloquy in every hearing. He know what I mean; I know what he's going to give me. It's part of the game he goes through.

MR. BAKER: It's still fun.

[fol. 122] MR. BAKER: Your Honor, at this time, I'd like to offer into evidence General Counsel's Exhibit marked for identification as 10AA and 10BB.

MR. JENKINS: We have the same objections as were made to the other Exhibits 10 of the General Counsel on the same grounds.

TRIAL EXAMINER: They will be received.

CROSS EXAMINATION

BY MR. JENKINS:

Q Mr. Mount, you testified earlier about a conversation between Charles Gissel and a cattle hauler, did you not? A Yes, sir.

[fol. 123] Q Do you know the name of this man who hauls cattle? A I just know him by his first name.

Q At the time of that conversation, Charles Gissel made the statement to the cattle hauler that he could buy his cattle already slaughtered and get his beef shipped in already killed and that would enable him to do away with the plant, didn't he? A The slaughter house department.

Q Right. And that's all that you recall him saying on that occasion, wasn't it? A Yes, sir.

Q And that is the truth, isn't it? A Yes, sir.

Q Now, when was the last time that you came back to work for the Packing Company before your employment terminated in April? A You mean how long I had worked there?

Q Yes, I understand that you began your employment sometime in 1963 and then that there was a break in it

sometime and I'm not sure when that was. When was it?
A I don't understand you.

Q Well, you first went to work for the Packing Company in April of '68, you testified, is that correct? A Yes, sir.

[fol. 124] Q And as I understand December, was it, '64, that you left for awhile? A You mean when I was let go.

Q Were you let go in December of '64? A Yes, sir.

Q And what was the occasion for that? A Well, for not having the hams put in the pans at the time.

Q This was in December of '64? A I'm not positive about the date, no.

Q Do you remember when it was? A It was a couple of months before I was let go the last time.

Q Now, had you taken a vacation sometime just before that? A Yes, sir.

Q Did you return to work after your vacation when you were supposed to? A No, sir.

Q Why not? A I was working on my house.

Q What day were you supposed to come back to work? A It was on Monday.

Q Do you remember the day of the month? A No, sir.

Q Was it sometime in February of '65? A I believe it was.

[fol. 125] Q And you were supposed to report back when your vacation was over on a Monday, right? A Yes, sir.

Q And you did not do it? A No, sir.

Q And the reason was you were working on your house? A Yes, sir.

Q And did you call the Company and tell them you were not coming back in? A Yes, sir.

Q Whom did you talk to? A Alfreda Closterman.

Q And what day did you call in and tell her that you were not coming in? A On Monday morning.

Q Were you given permission to take off? A Well, I would say given permission.

Q You were given permission? A No, sir, I just called in and said I wouldn't be in.

Q When did you report for work? A I believe it was on Wednesday.

Q That would be two days late? A Yes, sir.

Q And the reason was that you were just working on [fol. 126] your own house, is that right? A Yes, sir.

Q What were you doing on your house? A I was putting a roof on it.

Q Did you not give a statement to an agent of the National Labor Relations Board on the 23d day of February, 1965, did you not sign an affidavit that says as follows: "I went on vacation during the week of February 7th, 1965. I did not return to work until about February the 17th, 1965 because I had a chance to make some money plumbing on February the 15th and 16th. It is not unusual for a man to take a few days off from Gissel without calling in if a man could make more than \$1.25 an hour that Gissel paid." Did you sign an affidavit under oath to that effect to an examiner by the name of Jerald—What's his name?

MR. BAKER: Scheinberg.

Q (By Mr. Jenkins:) —Scheinberg of the Regional Office of the National Labor Relations Board in Cincinnati? A Yes, sir.

Q Was it the truth? A Yes, sir.

Q Isn't it true that the statement that you made here now that you called into the office is a lie? A I called in.

Q Isn't it a fact that when you testified previously here [fol. 127] that you were home working on your roof that that was false, that you were out doing plumbing work for money? A That was the afternoon.

Q You say now you did both of them? A That afternoon.

Q When you came back to work two days late did anybody inquire where you had been? A Well, Charles Gissel asked me where I had been.

Q What did you tell him? A I told him home.

Q And what did he say? A He said he'd fire me right then if it wasn't for the god-damned Union.

Q Now, you testified about an incident with respect to putting these hams in pans, didn't you? A Yes, sir.

Q After that incident occurred did you get a letter from the Company? A Yes, sir.

Q Do you have a copy or does your attorney over here have a copy of that letter? A I had the copy but I don't have it now.

Q Do you know who has the copy of it? A No, sir.

MR. BAKER: I've got it, Mr. Jenkins.

[fol. 128] MR. JENKINS: May I have it?

MR. BAKER: It was attached to his statement.

MR. JENKINS: I'd like this Respondent's Exhibit Number 1, please.

(Thereupon, the above-mentioned document was marked Respondent's Exhibit No. 1 for identification.)

MR. BAKER: No objections to its receipt.

MR. JENKINS: By stipulation of counsel, this letter, Respondent's Exhibit Number 1, we offer it in evidence.

TRIAL EXAMINER: Received.

(Thereupon, the document heretofore marked Respondent's Exhibit No. 1 for identification was received in evidence.)

Q (By Mr. Jenkins:) Mr. Mount, will you identify that Respondent's Exhibit Number 1 as the letter you received—

MR. BAKER: I think it's unnecessary since it has been received, Your Honor.

MR. JENKINS: It may be in evidence, Your Honor, but I want to tie it into the incident repudiating his prior testimony.

TRIAL EXAMINER: Use it to refresh his recollection for the reason it was received?

MR. JENKINS: Yes, ma'am.

THE WITNESS: This is it.

Q (By Mr. Jenkins:) This is the letter? A (Nods.)

MR. BAKER: The Trial Examiner will note that the [fol. 129] letter is signed by Alfreda Closterman.

Q (By Mr. Jenkins:) Now, this letter, Respondent's Exhibit Number 1, Mr. Mount, makes this statement—

MR. BAKER: I'm going to object to counsel reading—

MR. JENKINS: I'm making this a question, Your Honor.

Q (By Mr. Jenkins:) "You were due to return and report for work after your vacation on Monday, February 15, and you did not appear until Wednesday, February 17. We attempted to contact you unsuccessfully, and you have no excuse for your failure to appear for work as scheduled." Signed Alfreda L. Closterman.

This letter was written on February 19th, Mr. Mount. In the light of this letter, are you still testifying that on Monday, February the 15th, you called Mrs. Closterman and told her where you were and that you would not be in? A Yes, sir.

Q But she wrote you this letter after that?

MR. BAKER: Objection. That's argumentative.

TRIAL EXAMINER: Sustained.

MR. BAKER: The fact that she put it in a letter doesn't bother this witness.

Q (By Mr. Jenkins:) Now, this letter here, Respondent's Exhibit Number 1, makes reference to the fact that you were regularly late for work on a number of occasions, is this true?

MR. BAKER: Now, Your Honor, I'm going to object [fol. 130] to that because clearly if the letter is going in for the purpose as proof of the matter asserted, it's clearly hearsay.

TRIAL EXAMINER: He can question him about it.

MR. BAKER: He—I think he can question him so long as he's not indicating the letter is proof of what the letter says.

TRIAL EXAMINER: I'm not taking it as proof. I assume he's asking him questions based on it.

MR. JENKINS: Yes, Your Honor, that's correct. This letter here says that: "—you have been regularly late for work on a number of occasions." This letter was dated February the 19th.

Q (By Mr. Jenkins:) Is that true had you been late for work regularly on a number of occasions? A Yes, sir.

Q Mr. Mount, you testified about a conversation between Rush Moore and Charles Gissel. Do you recall that conversation in your testimony about it? A Yes, sir.

Q Who else was present, if anybody, when this conversation took place? A I believe Ken Adkins was, I'm not sure.

Q Was anyone else there? A No, sir; I don't think so.

Q Now, at the Union meeting at this hotel on April [fol. 131] the 17th, you testified about an incident down in the lobby of the hotel around the telephone booth, didn't you? A Yes, sir.

Q Who was there at the time this incident occurred beside yourself and Terry Lewis? A Jerry Frye, Ed Lees.

Q Who? A I don't know. There were three or four standing around there.

Q Do you know the names of any of the others? A No, sir. I don't recall the names.

Q On the day that you left at 11:30 and went up to work for your father-in-law, did you have any conversation with Charles Gissel that morning? A No, sir, not as I can recall.

Q The day of the week was Wednesday, wasn't it? A Yes, sir.

Q Is this a slow day at the plant? A No, sir. It's the busiest day.

Q Had you ever not worked on a Wednesday before? A All day?

Q All day. A Well, we been let go earlier in the evening.

Q On Wednesdays? A Yes, sir.

[fol. 132] Q How early? A I think we left there as early as 3:00 o'clock.

Q What day did this happen on? A I don't know the exact date.

MR. BAKER: He answered it happened on Wednesday. Is that what you're asking him?

Q (By Mr. Jenkins:) Now, had you worked on the previous Wednesdays of that month? A Yes, sir.

Q All day? A As far as I know, yes.

Q Why was it that you had to work all day on Wednesdays? A Because that's when all the truck orders and everything had to go out.

Q What kind of work did you do? A Well, I boned hams and worked in the shipping room and helped fill orders.

Q Did you work with any crew of fellows regularly?

A Well, when I boned hams I generally boned by myself

but when I worked in the shipping room I worked with other guys, yes.

Q What other guys would you work with in the shipping room? A Elmer Cremins.

Q And who else? A And Jerry Frye.

[fol. 133] Q Who else? A Kenneth Adkins.

Q Anybody else? A Well, just whoever else was in there. I mean sometimes it wasn't the same ones every week.

Q On Wednesdays would you work both places or would you work just in the shipping room or would you just be boning? A Well, I have boned hams on Wednesday and worked in the shipping room. I boned hams part of the day and then come up in the shipping room depending on how busy they was.

Q You worked both places then? A Yes, sir.

Q Now, you say that on Monday of the following week you worked at the plant and that Karl Gissel told you and Frye on that Monday morning that your hours would then be from 5:30 until 11:30 until further notice, is that right? A Yes, sir.

Q And who else did he make that statement to? A Well, Tommy Burchell was out there and he told him he didn't need him the next day.

Q That was for Tuesday? A Yes, sir.

Q All right, but he did ask you to work on Tuesday? A Yes, sir.

Q And who else did he tell that they would not work [fol. 134] after 11:30? A Jerry Frye.

Q And who else? A That was all in my presence.

Q Do you know whether any of these regular people that you were working with worked after 11:30 on Tuesday or Wednesday? A Yes, sir.

Q Which one of them worked after 11:30 on Tuesday in your regular crew that you have mentioned? A Elmer.

Q Who else? A I can't remember who else was working in the shipping room at that time.

Q Now, isn't it a fact that you always got your instructions as to when you were to work on a day by day

basis? In other words, you'd come in in the morning and then if you were going to be laid off early that day because of lack of work, well, you'd be told that day, wouldn't you? A Yes, sir.

Q That had been the invariable custom of the business down there, hadn't it? A Well, we worked, we'd come in and worked, I mean just whenever we got through we were through.

Q Right. And if you got through early then you were laid off, isn't that right? A Yes, sir.

[fol. 135] Q Now, the week before your last week had you been coming in at 5:30 or at 6:00? A At 6:00.

Q Starting the following week who all came in at 5:30? A You mean the week we was let go?

Q Yes. A Me and Jerry Frye.

Q Who else? A I believe that was all.

Q No one else had to come in at 5:30? A Yes, sir. I'm pretty sure that was all that was coming in at 5:30.

Q Why were you asked to come in at 5:30? Was there extra work or something to be done? A No, sir, it was just work on the truck orders.

Q In order to get the trucks filled? A Well, yes, sir.

Q Did you need that extra half an hour in order to get the trucks ready so that they could leave on time? A Yes, sir, if the orders were big enough.

Q And apparently the orders were big enough to require that, is that right?

MR. BAKER: I'm going to object.

TRIAL EXAMINER: Overruled.

[fol. 136] Q (By Mr. Jenkins:) When you were requested, it would be on that basis I assume, is that correct? A Yes, sir.

Q Now, on this Monday that you were there by around 11:30, this is the last week you worked, was the work that you were to do apparently finished? A Well, there wasn't any hams to amount to anything on the shelf. We had just about boxed them all up, I mean orders.

Q That is part of it. You had finished that job, is that right? A No, sir. I don't think I boned any hams that morning.

Q I see. Well, what I'm asking you is this, Mr. Mount, were you apparently through the work that you had to do there on that Monday by around 11:30? A I would say no.

Q Well, what about on Tuesday, did— Let me put it this way: Who all left at 11:30 on Monday? A Me and Jerry and I think Tommy Burchell did, I'm not sure about him, I think he left though.

Q Did any of the rest of them leave at that time? A No, sir, I didn't notice anybody. I mean we just went ahead and went home.

Q Well, then you don't know whether they left or not, is that what you're saying? A Yes, sir.

[fol. 137] Q Now, on Tuesday who left at 11:30 besides yourself and Frye? A Well, that's all as I know of.

Q You don't know whether anybody else left then or not? A No, sir, we just went ahead and left.

Q Now, in addition to the other problems that came up between you and the Company that we've already covered here, there was an incident that occurred also when you refused to shake hides at the request of the Company, didn't you? A Yes, sir.

Q Now, when did this occur? A About 6:30 that night.

Q And about what month was this or day? A I wouldn't have any idea.

Q Well, this was in the last part of March of 1965, wasn't it? A Sounds about right.

Q And at that time you were requested to assist the other employees of the Company there in shaking hides, weren't you? A No, sir. I was just asked would I go back if I would help them.

Q Yes. A It was no order. They just asked. Eddy Lewis asked me would I help them.

Q Uh-huh. This is a job that everybody does, isn't it? [fol. 138] A No, sir. It's call for extra help.

Q Well, the other fellows in the plant do this work, don't they? A Not all of them.

Q Well, most of them do, don't they? A No, not most of them, just a few. Whenever they have a few of them back there who quit or something, they would come up and get a few out of the plant, just a few.

Q On April the first of this year before a court reporter didn't you give me a statement in which this question was asked and you gave this answer: "Have the other fellows here in the plant done it before sometimes?" Answer: "Yeah, they have." That's correct, isn't it? A Yes, sir.

Q Did you not tell me when I questioned you that you refused to shake hides when requested to do so because you weren't hired for it? A Yes, sir.

Q And I asked you if you had not done it on an earlier occasion and you said that you had, didn't you? A Yes, sir, one time.

Q And this was all in the last part of March, isn't that right? A I think so.

[fol. 139] Q And when you were asked to do it, you refused and punched out and went home, didn't you? A I had already punched out to go home when I was asked to do it.

Q And then you refused to do it and went on home, didn't you? A I said I had to go on home, yes, sir.

MR. BAKER: I move that line of questioning be stricken as I know of absolutely no materiality to that.

TRIAL EXAMINER: I still don't know what the Company's defense is going to be. This is one of the problems when the answer doesn't give you any idea of what the Company's explanation is going to be, whether the facts are material or immaterial.

MR. BAKER: I would assume, Your Honor, that based on Mr. Charles Gissel's testimony that the employee wasn't fired at all; he quit. If he quit I don't see any materiality to any of this, unless they have a flexible defense that can move from one point to the other as the case may be.

Q (By Mr. Jenkins:) Are you employed now, Mr. Mount?

MR. BAKER: Object. That's immaterial whether or not he is employed now. This is not a back pay hearing.

TRIAL EXAMINER: What is the purpose of that?

MR. JENKINS: I think we have a right to ask him that situation, Your Honor.

MR. BAKER: I think in light of this Company's conduct they don't have.

TRIAL EXAMINER: For what purpose?

MR. JENKINS: We want to know what he's doing now. It may give us a lead on something that might be material here. By the same token we—

TRIAL EXAMINER: Do you have something affirmative in mind or is it just a fishing expedition?

MR. JENKINS: I don't have anything specifically in mind except that we want it as part of our general information just like I think he was asked where he lived. I don't know that that's of material—

TRIAL EXAMINER: Very well. He may answer.

MR. BAKER: I think that under these circumstances, this employee has been discharged from his job and I think fairly obviously for Union activity. I don't know what the vindiction of this Company is but I certainly cannot see any materiality to his state of employment.

TRIAL EXAMINER: Certainly the question of back pay is not to be litigated in this proceeding.

MR. BAKER: Just fishing as to whether or not this witness is working somewhere is immaterial.

TRIAL EXAMINER: Are you presently employed?

THE WITNESS: Yes, ma'am.

MR. BAKER: He answered that. Counsel wants to [fol. 141] know where he's employed and that's the part I'm objecting to. It's not material at all.

TRIAL EXAMINER: Sustained. He may be willing to tell him.

MR. BAKER: I just don't want it on my conscience, Your Honor.

Q (By Mr. Jenkins:) Mr. Mount, do you remember the day you signed some authorization card for this Union? A Yes, sir, I remember signing, not the specific day.

Q Where were you when it happened? A At home.

Q Who was present when you signed it? A My wife.

Q And who else? A Well, Red Cass.

Q What did Mr. Cass say to you in connection with that visit? A He told me he was taking applications for the Union and I—and asked me if I would want to sign. I said yes.

Q What else was said? A Well, just that he had talked to some of the other boys about it, that some of them had signed.

Q Did he say that some of them had not signed? A Yes, sir.

Q Did he say who had refused to sign? A No, sir.

[fol. 142] Q Did he give any reason why anybody had not signed? A No, sir.

Q What did he say to you about signing as far as why you should or should not sign? A Well, he didn't have to say anything to me for I knew we needed better working conditions.

Q He didn't say anything else to you? A No, sir.

Q You mean he just walked in, handed you a card, and you signed it; and he left, and that was all that was to it? A No, sir.

MR. BAKER: I object. Counsel is not characterizing the testimony correctly at all.

TRIAL EXAMINER: Sustained. I didn't understand the witness to say no words were spoken. I assume he said hello.

Q (By Mr. Jenkins:) I have asked you about—I have asked you some questions about what was said. Now, I want to know what else was said that you have not already testified about here? Anything? A He just explained about what the Union was from and said that they were trying to organize the Union.

Q Did he make any statement to you about whether or not you would have to join the Union in order to work at Gissel? A No, sir.

[fol. 143] Q Did he make any other promises to you? A No, sir.

Q Didn't promise you a thing? A Didn't promise me nothing.

MR. JENKINS: That's all I have.

MR. BAKER: May I see that document you were reading from, Mr. Jenkins?

MR. JENKINS: No, sir.

MR. BAKER: Your Honor, I think in light of counsel's statement that he had a document or interview recorded by a court reporter that General Counsel should be

equally entitled to see that under the circumstances as counsel for Respondent is entitled to see anything and everything that General Counsel uses in the matter of interrogation. I know nothing about this but apparently this attorney has interviewed another witness. I think that I should—

TRIAL EXAMINER: The witness?

MR. BAKER: It was this witness. And I knew nothing about it and I think that I would like to see the document from which counsel was reading.

TRIAL EXAMINER: You may make the request.

MR. BAKER: I requested and counsel has refused. I'm not asking the Trial Examiner to order him to present that document. The—

TRIAL EXAMINER: Can you cite^s authority?

[fol. 144] MR. BAKER: I can cite the Jenks Act. What is sauce for the goose is sauce for the gander, as a matter of speaking.

TRIAL EXAMINER: Well, it's argument. Can you cite me any—

MR. BAKER: I can't cite you any at this moment other than he used a document for the purpose of interrogation of this witness.

TRIAL EXAMINER: On this basis, you have a sounder point I should think.

MR. BAKER: He read from that document and cross-examined the witness and I'm asking that I might be allowed to see the document.

TRIAL EXAMINER: What is your answer to that, that you read from a document?

MR. JENKINS: My answer is that I refuse to do it, that it's part of my personal file. It was not introduced into evidence and my file is not available to the General Counsel.

TRIAL EXAMINER: But you did read from it, a portion to this witness.

MR. JENKINS: Yes, I did, and the witness admitted it.

TRIAL EXAMINER: That's right but you were using the document in examining this witness.

MR. JENKINS: I referred to the document and I asked the witness a statement if it were true, a factual

statement, and the witness testified that it was true, and I did not use the document to impeach him and then I fol-[fol. 145] lowed it up with a question to the witness, "Well, the statement you made is the truth," and he admitted it, and I let it go at that.

TRIAL EXAMINER: Did you say at the offset, didn't you make a statement to me before a reporter at sometime in March, I believe the date was? Did you ask that question?

MR. BAKER: He did.

MR. JENKINS: I think my recollection is not good enough to represent to you. I think we better have the reporter go back and check it.

(Record read.)

TRIAL EXAMINER: Back on the record.

MR. JENKINS: Before you rule on the request, as I understand it the request is from the General Counsel that I as attorney for Respondent turn over the statement of April 1st to which I referred in the cross-examination. Now, the position of the Respondent is that such statement is a part of my work product in the preparation of this case. The fact that I asked a question of this witness which was explicit on its face and the witness admitted that he did make such a statement at that time and that it was the truth does not entitle the General Counsel to go into that statement on what some people might call a fishing expedition or anything else for other or collateral matters involved in it. I will have to respectfully say that I will not turn over that statement because I think, with all due respect to any ruling that the Trial Examiner may [fol. 146] make, it is a privileged part of my work product. There has been no authority whatsoever cited by the General Counsel wherein an attorney for Respondent under such circumstances as these has had to turn over such part of his file and if there is authority that the Trial Examiner knows of, I'll be glad to consider it and reconsider our position on it. But so there won't be any misunderstanding about it, as of this time until we see authority to the contrary I refuse to turn over the statement.

TRIAL EXAMINER: Mr. Baker, do you have authority?

MR. BAKER: Just the general rules of evidence where a document is brought in pertaining to the witness and used from counsel table or at the witness chair and there is interrogation from that document that the other side has always been entitled to see it. It's just a matter of evidentiary rules. However, it would appear that regardless of how Your Honor would choose to rule, Mr. Jenkins does not intend to comply with it should you say do it. I assume the whole thing is moot.

TRIAL EXAMINER: I would think so, too.

MR. BAKER: And I will rely on that I made my request for it and Mr. Jenkins has refused the Examiner's ruling notwithstanding.

TRIAL EXAMINER: I haven't—

MR. BAKER: I would like the Trial Examiner to rule.

TRIAL EXAMINER: My ruling is if the document is [fol. 147] being used as a basis of examination, counsel has a right to examine it on either side. I would request that it would be produced. But, of course, as Mr. Jenkins holds, as you know, you have no authority to require production.

MR. BAKER: Just so the record shows that as of now I have no authority.

REDIRECT EXAMINATION

BY MR. BAKER:

Q Mr. Mount, did you appear before the court reporter when Mr. Jenkins asked to take a statement from you?

A No, sir.

Q You didn't? Did he talk to you before today, Mr. Mount, Mr. Jenkins? **A** I don't remember of him ever talking to me.

Q You don't remember him calling you into the office and telling you who he was and having a court reporter there and asking you questions and putting it down around two or three weeks before you were fired? **A** There were two guys came but I couldn't swear that he was one of them.

Q Where did this take place? A In the office.

Q Why were you in the office? A Charles Gissel came down into the pickling room where I was boning hams and got me.

Q Where did Mr. Gissel send you when he got you? [fol. 148] A He just told me to come up to the office there was a guy wanting to talk to me.

Q Did he tell you who this guy was? A No, sir.

Q Did he tell you what the guy wanted to talk to you about? A No, sir.

Q When you got there what did the guy say? A He was asking me about the hide shaking and he asked me about Kenny Adkins.

Q What did he ask you about Kenny Adkins? A Asked me what did I—did I hear Charles Gissel fire him.

Q Was Kenny Adkins fired? A Yes, sir, he was fired.

Q Do you know why he was fired? A For not shaking hides.

Q You're sure it wasn't Mr. Jenkins? He's a great big, tall fellow, sitting there? A He could have been.

Q Did he have someone else with him you say? A Yes.

Q What was this other fellow doing? A He was writing it down.

Q What did he have to write with? A Just a pad. [fol. 149] Q Taking shorthand? A Well, he was—he just had a pad and a pen.

Q Did they tell you they were taking down everything you said? A I don't remember them telling me but I knew that they were doing it.

Q Did they show you anything? This is a blue book he had. Did he ever show you that after he took it down? A No, sir.

Q Did he mention the Union at anytime during this, while he was talking with you? A I don't think so. I'm not positive but I don't think so.

Q What else did he ask? A He just wanted to know what the boys' reply was when they was asked to shake hides.

Q Whose reply, your reply? A No, the other boys.

Q What was the other boys' reply? A Well, they asked Kenny, Eddy Lewis came up and asked him to shake

hides, and he said he wasn't going to shake them, and so he told him to get his stuff and go, that he was fired.

Q Now, you said something about shaking hides, they had extra help, what did you mean by that? A Well, they always run an ad in the paper, hire extra help shaking hides.

[fol. 150] Q You say you had shaken them one time before? A Yes, sir.

Q When was that? A I'm not very good on dates but it was, oh, I was there about a year or something like that.

Q And you shook them the one time? A Yes, sir.

Q Is that the reason you didn't want to shake them again? A Yes, sir.

Q What's wrong with shaking hides? A Well, it's just a filthy damn job. It breaks your hands out and when you get back there and shake them they dog you to death. They just work you to death and you don't never get to stop or nothing.

Q What's wrong with the hides? What kind of shape are they in? A Well, maggots, just dirty and everything, salt all over them.

Q Did anyone else shake hides that you knew of besides the extra help when they asked you this last time? Did anybody go back and shake hides that worked in the plant that you know of? A I think it was a few but I don't remember just who it was but there was very few that went back.

Q You say you had already clocked out when Eddy [fol. 151] Lewis talked to you? A Yes, sir. I had worked from six till six, and it was about 6:30 when I clocked out.

Q What did he say to you? A Well, I had punched out and waiked out the door. He said he was out there asking to go back to shake hides, they had about an hour left. He said they had about an hour. He asked—he just asked who would help. He said, "Will you?" and he kept going like that. When he got to me, there was four or five of us said no, so when he got to me I said I had to go on home. So he didn't say nothing else.

Q Had about an hour left is that what he said? A Yes, sir. They calculated they would finish up about 7:30 that night.

Q What do they pay you an hour? A \$1.25.

Q You say those hides are covered with maggots? A Yes, sir.

Q And you worked 12 hours? A Yes, sir.

[fol. 156]

Cabell County Court House,
Huntington, West Virginia,

Thursday, August 5, 1965.

[fol. 157-A] MR. BAKER: In yesterday's cross-examination of Mr. Spencer by Mr. Jenkins reference was made to the prior election, I don't know if he gave the case number, I think it was 9-RC-3966. At this time, I would like to have marked for identification and offer into evidence the Trial Examiner's decision from Case Number 9-CA-2068, which was an unfair labor practice case involving this Respondent and this Charging Party, out of which election in the "R" case arose.

Would you mark this for identification, please.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit No. 11 for identification.)

(Document is shown to Mr. Jenkins.)

TRIAL EXAMINER: Any objection?

MR. JENKINS: Yes, Your Honor, we object to admission into evidence of General Counsel's Exhibit Number 11. The cross-examination that we made yesterday was after you had ruled, subject to that ruling we take the position we did yesterday that this type of evidence is inadmissible in this hearing and is not proper. It would get us involved in some preliminary findings of a Trial Examiner. We would have to go back and try that same case. I don't know what probative value a Trial Examiner's decision in a case in July of 1960 would have. [fol. 158] No reason has been advanced by the General Counsel to sustain the materiality of it to any issue that is properly before the Board at this time. It's a collateral matter that has no bearing on the situation here. Cer-

tainly we did not waive, in view of the decision yesterday on direct examination when we objected to certain questions that Mr. Baker asked this Union man, we did not certainly by going along with cross-examination, in light of your ruling at that time, we certainly did not waive any of our rights to the materiality as evidence.

TRIAL EXAMINER: You waived no rights.

MR. JENKINS: Pardon?

TRIAL EXAMINER: You waived no rights.

MR. JENKINS: Right, and that's our position on it.

TRIAL EXAMINER: It will be received.

* * * *

[fol. 159] MR. JENKINS: Now, Your Honor, in view of your ruling in admitting General Counsel's Exhibit Number 11, I request that the hearing of this matter be adjourned now or at the conclusion of the General Counsel's case that it be adjourned for sufficient time in order to give me time to review that ruling and interview the witnesses involved in that and bring them in.

TRIAL EXAMINER: We're not going to litigate this. This is simply a matter of a finding that has been made in a proceeding. What weight is to be given to it is a matter for my judgment. The Board has held and the courts have held that certainly prior decisions of the Board, the Board is entitled to take official notice of them which does not mean they are to be relitigated. I will determine what weight to be given to that and I certainly am not going to relitigate it. You can introduce any evidence you have with respect to objections filed to that adverse action taken by the Board or some court but we're not going to relitigate the matters therein. This is a matter of the Board and its Trial Examiner taking official notice of prior findings by a Trial Examiner and/or the Board in a case involving the same parties. I assume it's the same Union, is that true?

MR. BAKER: Same Union, same Employer.

TRIAL EXAMINER: Very well.

[fol. 160] MR. BAKER: It's offered, Your Honor, simply in light of counsel's implication in his cross-examination yesterday about this Union following this kind of procedure. It is simply to show why an election in all prob-

ability could not be held under the laboratory conditions required by the Board.

MR. JENKINS: So the record will be clear, it is my understanding that you have denied my motion, is that correct?

TRIAL EXAMINER: That is correct.

* * *

[fol. 161]

JERRY LEE FRYE

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q State your name and address, please, for the record.

A Jerry Frye. I live at 1509 and a half Seventh Avenue here in Huntington.

TRIAL EXAMINER: Speak as loud as you can, Mr. Frye.

THE WITNESS: O.K.

Q (By Mr. Baker) Were you an employee of Gissel Packing Company? A Yes, sir.

Q When were you first hired? A Around the last of June of '63.

Q Who hired you? A Charles.

Q What was your job there? A I worked in the shipping room and I boned a few hams, mostly in the shipping room.

[fol. 162] Q Now, are you presently employed at Gissel Packing? A No, sir.

Q When did you leave? A I was discharged April 22nd.

Q Of this year? A Yes.

Q Now, let's take the date of April 22nd, there has been testimony given there was a Union meeting on or about April the 17th, I believe, would you state whether you attended that meeting? A Yes, sir.

Q Where was the meeting held? A Governor Cabell Hotel.

Q Now, going back prior to the meeting, say the week of the meeting, did you have any cause to believe that the Employer knew that that meeting was to be held? A Yes, sir.

MR. JENKINS: Objection. Calls for a state of mind.

TRIAL EXAMINER: Sustained.

Q (By Mr. Baker) Did you know whether or not the Employer was aware that meeting was to be held?

MR. JENKINS: Objection. Calls for a state of mind.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) You may answer. A Yes.
[fol. 163] Q How were you aware that the Employer was aware that this—

MR. JENKINS: Objection.

Q —this meeting was to be held?

MR. JENKINS: Objection on the same ground.

Q (By Mr. Baker) How did you know that the Company knew about the meeting?

MR. JENKINS: Objection, same ground.

TRIAL EXAMINER: You have a standing objection.

MR. JENKINS: Yes.

Q (By Mr. Baker) Go ahead, answer. A On Thursday morning before the Union meeting on Saturday, I heard Charles talking to—Charles Gissel and Charles Hutchinson were talking.

Q Charles Hutchinson I believe is a relative or something? A Yes, he's some relative of Herb Gissel.

Q Where did this conversation take place? A In the shipping room.

Q Where were Mr. Gissel and Mr. Hutchinson at the time? A They were standing at the desk where the orders are wrapped.

Q Where were you? A I was about three feet from them.

Q What did you hear Mr. Gissel say to Mr. Hutchinson or Mr. Hutchinson say to Mr. Gissel? A Mr. Hutchinson told Mr. Gissel that there was going to be a Union meeting Saturday.

[fol. 164] MR. JENKINS: Objection. Hearsay.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) Go ahead. A He said there was going to be one Saturday at 2:00 o'clock and asked Charles

if he knew anything about it. Charles Gissel said he already knowed about it. He said he knowed about it two or three days ahead of time and Charles said that there would be somebody there watching to see who all went in.

Q Someone where? A At the hotel.

Q Did you say you went to the meeting? A Yes, sir.

Q Was there someone there watching? A Yes, sir.

Q Who? A Terry Lewis, that's Edie Lewis' son. She's a sister to Charles Gissel.

Q I see. What happened then? Where was Terry Lewis? A He was in a telephone.

Q Booth? In a booth? A Booth. Talking.

Q Did you see him there? A Yes, sir.

[fol. 165] Q Did he see you, if you know? A Yes, he looked right at me.

Q You were in front of the booth? A Yes, sir.

Q How close would you say you were to the booth? A Oh, two or three feet.

Q And Terry looked right at you? A He was looking right at me.

Q Did you go to work on Monday? A Yes, sir.

Q What happened on Monday? A Nothing happened till about 11:30.

Q What happened then? A Me and Herb Mount walked out to Charles' car.

Q Charles Gissel's car? A Yes.

Q Was he in the car? A Yes, sir.

Q What was Charles doing in the car, if you know? A I think he was listening to the stock reports because that's what he did about every day.

Q I see. Was there any conversation with Mr. Gissel at that time? A Yes, sir.

[fol. 166] Q What was the substance of that conversation? A He was listening to the stock report and told us just to wait a few minutes, so we stood there and waited, and he asked Herb if he went to the Union meeting Saturday. Herb said no, and Charles said, "I know you did. You were saw there. Someone told me you were there."

And then Red said, yes, he was.

And then Charles said, "Well, there's going to be some different arrangements made around here now."

Q Did he say what those arrangements would be? A Yes, he said—we asked him if he wanted us to work that afternoon and he said no. He said, "I want you all to come in 5:30 and work till 11:30 until further notice."

Q What time had you been coming in? A Coming in about six and working till four or five.

Q That was on Monday. Did you come in on Tuesday?

A Yes, sir.

Q What time on Tuesday? A 5:30.

Q How long did you work? A 11:30.

Q What about Wednesday? A Same thing.

Q Came in at 5:30 and worked till 11:30? A Yes, sir.

[fol. 167] Q Did you leave the plant at 11:30? A Yes, sir.

Q Do you know if Mr. Gissel was aware that you were leaving the plant at 11:30 that day? A Yes, sir.

MR. JENKINS: Objection. Calls for a conclusion.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) How did you know that Mr. Gissel was aware that you were leaving the plant that day?

A He walked up to the door the same time we did.

Q What conversation, if any, did you have with Mr. Gissel as you left that plant that day? A He never said nothing.

Q Now, what happened say on Thursday, did you go back to work at 5:30 as usual? A Yes, sir.

Q What happened then when you got to work, if anything? A We were looking for our timecard.

Q What do you mean you were looking for your timecard? A We thought maybe somebody hid them someplace so we kept looking for them.

Q Do you have a timeclock, do you? A Yes.

Q And a rack for cards? A Yes.

[fol. 168] Q And your name on them? A Yes, sir.

Q There's a special portion of the rack for your card? A No, not really, just a timeclock. Lots of places they've got numbered timecards but this one they don't. They—just where you usually put your card in.

Q A rack? A Just a rack.

Q Were your cards there? A No, sir.

Q What time did you arrive at the plant that morning? A About 5:30.

Q How long did you look for these timecards? A I'd say about five minutes.

Q Then what did you do, if anything? A Went towards the office.

Q Was there anybody in the office? A Yes, sir.

Q Who was there? A Mr. Charles Gissel.

Q Did you have any conversation with Mr. Gissel? A Yes, sir.

Q Would you tell the Trial Examiner what was said in the office that morning by Mr. Gissel and by you or Mr. Mount? A We asked him where our timecard was.

[fol. 169] Q What did he say? A He said, "We pulled them."

Q Go ahead. A We said, "What for?"

He said, "You all walked off the job yesterday."

I said, "No, we didn't walk off the job yesterday."

He said, "Yes, you did, too." He said, "You all—" in other words, your overwork.

I said, "Yes, I worked about 10 or 15 minutes or maybe a little longer." I says, "But you didn't tell us to come back."

He said, "Well, you all should have knowed."

I said, "No, we shouldn't have knowed." I said, "You told us Monday that we would work from 5:30 till 11:30 till further notice." And I said, "You didn't tell us no different."

And he said, "Well, you still should have knowed."

And he said, "I want you all to get out of here." He said, "I'm going to call the law."

Q What was he doing, if anything, at that time when he said he was going to call the law? A He was standing there and he started toward the desk.

Q All right. Then what happened? A And Red said he was going down to get his boots and knife and I imagine it was about 20 minutes till 6:00 then, and Charles hol-lered over to the sausage room, we was standing there ready to go to work.

[fol. 170] Q Who was there, sausage room employees?

A Yes. Told them we was late.

I said, "Yeah, we would be late," I said, "we've been standing here looking for our cards for five minutes." I said, "We were arguing with you for five minutes."

Q Did he say anything to the men in the sausage room if you recall? A Yeah, he said, he told them to look at us, how late we were. That's when I told him, I said, "Yeah, we would be late, standing here for five minutes looking for our timecard," and five minutes arguing with him, you know, to try to get our job back.

Q All right, then, what happened? A Then when Red got his butcher knife—

Q When you say Red— A Herbert Mount.

Q Did Red come back up? A Red come back up and we started out the door. Charles said, "You all can take that Union and stick it up your ass."

Q That was the end of it? A That was the end of it.

Q You hadn't had any conversation with him since? A No, sir.

Q Had you heard Mr. Charles Gissel make statements about the Union before this last week that you were there?

A Yes.

[fol. 171] Q You have. All right. Now, directing your attention to the first time that you heard Mr. Gissel mention anything about the Union, would you tell us when that was? A Well, I don't know exact but I think it was around about the middle of September.

Q Last year, '64? A Sixty-four.

Q Where did this conversation take place? A In his office.

Q Was anybody else present? A I don't know really. Alfreda Closterman, she could have been, I mean I don't know.

Q What were you doing in Mr. Gissel's office. A Went to ask him something about an order.

Q What did he say to you? A He told me to shut the door.

Q Did you go into his office or go into a larger office? A It was a big office there. Alfreda and his mother and Charles—

Q I see. A —all stay in there.

Q So he asked you to shut the door? A Uh-huh.

Q What did he say to you? A He asked me if anybody talked to me about a Union. I said no, I said, "I didn't talk to anybody."

[fol. 172] He said, "Well, if you do or of I think you're talking to a stranger, that is a Union man," he said, "I'll fire you right now."

Q Just from your own knowledge there wasn't any Union around in September, was there, talking to you? A They never talked to me if they was around.

Q From your own knowledge in Huntington was there a Union campaign going on that got any publicity that you were aware of? A Yeah, I believe there was.

Q Do you remember where it was? A I think it was at Logan.

Q Logan Packing Company? A (Nods.)

Q Is that a company? How does it compare with Gissel Packing?

MR. BAKER: Pardon me?

TRIAL EXAMINER: He's going to have to answer. He nods his head.

Q (By Mr. Baker) What is Logan?

MR. JENKINS: Objection. Irrelevant.

TRIAL EXAMINER: He may answer.

[THE WITNESS:] It's a meat packing plant like Gissel.

[fol. 173] Q (By Mr. Baker) About the same size, would you say, or is it larger or smaller? If you know. A I don't know.

MR. JENKINS: Objection. Irrelevant.

TRIAL EXAMINER: Sustained.

Q (By Mr. Baker) Did you have other conversations or hear conversations about the Union that Mr. Charles Gissel had after this conversation in September, if you recall? A Yeah.

Q When was that? A I think that was in February. I don't know actually when it was.

Q February. Do you remember what part of February? A I think about February the 10th.

Q Where did this conversation take place? A Over at the garage.

Q All right. Who was present at the time? A Mr. Charles Gissel and Rush Moore, he's a maintenance man.

Q Who was Mr. Gissel talking to, you or Mr. Moore? I assume you were there if you heard it. A Mr. Moore.

Q What did Mr. Gissel say to Mr. Moore at that time? A He asked him if he knowed anything about the Union or if any Union men had been around to sign him up for a Union or if he knowed anything or heard anything.

[fol. 174] Q All right. A Mr. Moore said no, he hadn't.

Q All right. A Then he asked me, he said, "Do you know anything about Don Kidd."

Q Who is Don Kidd? A He was a man who did work in the boning room.

Q What did Mr. Gissel say about Donald Kidd? A He asked Rush if he know if he was the leader of the Union or if you know anything about Don Kidd, and Rush said no, he didn't know anything about it.

And Charles said if he finds out for sure that Don Kidd was the leader, he said he would fire him right there.

Q If he found out Don Kidd was the leader, did you say? A Yes, sir.

Q Now, did you have any conversation with Mr. Gissel other than conversation you just overheard? Did he ever say anything to you after this incident on February the 10th? A Yes, sir.

Q When was that? A Same day. This incident happened in the morning. This other incident now I'm going to say happened in the afternoon.

TRIAL EXAMINER: Which is the morning?

THE WITNESS: The one Rush Moore and Charles—

TRIAL EXAMINER: In which Mr. Kidd was mentioned?

[fol. 175] THE WITNESS: Yes.

Q (By Mr. Baker) You had this conversation with Mr. Gissel that afternoon, the same afternoon? A Yeah, about 2:30.

Q Where did this conversation take place? A In the shipping room.

Q Was anybody else present at that time? A No, sir.

Q What did Mr. Gissel say to you and what, if any thing, did you say in reply in regard to the Union? A He asked me if I knowed anything about the Union. I said, no, I didn't. He says, "What did they offer you?"

I says, "They didn't offer me nothing."

He turned around, starting to walk out the door of the office, and he turned around and asked me, he said, "I can offer you more than what they can."

Q Was that the extent of the conversation, if you recall? A Yes, that was all I know of.

Q Now, Mr. Frye, I show you what has been marked General Counsel Exhibit 10-CC for identification, and ask you if you can identify that document? Was that your signature? A Yes, sir.

Q Did you sign it on or about the date indicated, January 19, 1965? A Yes, sir.

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit No. 10-CC for identification.)

[fol. 176] MR. BAKER: At this time, I offer General Counsel's Exhibit 10-CC for identification into evidence.

MR. JENKINS: We object on the same grounds as the objections to the other General Counsel's Exhibits 10.

TRIAL EXAMINER: It will be received.

[fol. 177] CROSS-EXAMINATION

BY MR. JENKINS:

Q How old are you, Mr. Frye? A I'll be 22 October, the 3d.

Q Where do you work? A What was that again?

Q Where do you work?

MR. BAKER: I'll object to it. It's the same objection as I had yesterday. I see no materiality where he's working now. He testified he worked at Gissel and he was discharged so I don't see the materiality of his place of employment.

TRIAL EXAMINER: What is it material to?

MR. JENKINS: I think it's part of the background on any witness, that we have a right to know. It may furnish a lead for further investigation, his activities. We don't have the benefit of discovery in these cases. We have the right to ask a man where he works now, what his age is, where he lives. These are just routine. I've never had an objection on something like this before.
[fol. 178] TRIAL EXAMINER: I'll sustain the objection.

MR. JENKINS: May we vouch the record then, his answer?

MR. BAKER: No.

TRIAL EXAMINER: Sir?

MR. JENKINS: Will you permit me to make an avowal for the record what his answer—

TRIAL EXAMINER: Yes, you can offer proof, if allowed to answer he worked a certain place.

MR. BAKER: But not in the form, Your Honor, not in question and answer.

TRIAL EXAMINER: That's right.

MR. JENKINS: You will not permit the witness to answer?

TRIAL EXAMINER: You may make an offer of proof if allowed to answer the witness will state he works so and so.

MR. BAKER: Yes, but not if counsel knows where he works.

TRIAL EXAMINER: That's right. He may make an offer of proof.

* * * *

[fol. 179] Q [By Mr. Jenkins] Now, when was the next contact you had with respect to any Union activities after that? A I don't remember right off.

Q You don't remember? Let me remind you that you have reported detailed conversations here about various things. Are you now saying you don't remember when your next contact with the Union was after January the 19th?

MR. BAKER: I think that's argument. The witness has answered.

TRIAL EXAMINER: He said he could not remember.

Q (By Mr. Jenkins) Is your answer still that you cannot remember? A Well, I mean what do you want to know? I can tell you a lot of things but I don't know what you are wanting—

[fol. 180] Q Now, you testified that awhile back, that in February you had a conversation with Charles Gissel and that he asked you if you knew anything about the Union, you so testified, didn't you? A Yes, sir.

Q And your answer to him was no? A Yes, sir.

Q And that was not true, was it? A Yes, sir.

MR. BAKER: I think a good deal of law, Your Honor—

TRIAL EXAMINER: This is a matter for briefs.

MR. BAKER: Well, stating that the witness lied in response to illegal interrogation—

TRIAL EXAMINER: Is a matter to be pointed out in brief.

MR. BAKER: All right.

Q (By Mr. Jenkins) Now, in February, did you have a conversation with Charles Gissel in the shipping room, did you testify about this? A Yes, sir.

Q Did you tell Charles Gissel, and did you so testify here earlier, that you did not know the name of the Union [fol. 181] that was trying to get into the plant? A Yes, sir.

Q And that was not correct, was it? A I did not know the name. They told me but I had forgotten but I did not know at the time.

Q You remember all these specific conversations but yet you forgot the name of the Union you had signed up with, is this not correct? A Yes.

Q And you signed up with the Union in January and then in February you could not even remember the name of it? A No, sir.

Q And you have testified here with respect to some conversations that took place in September of 1964. Whom did you first report these conversations to? A What do you mean?

Q Whom did you first tell about these conversations, the fact that you had heard them? A I don't think I told anybody.

[fol. 185] Q (By Mr. Jenkins) What else was said about Gissel at the meeting? A I can't remember.

Q Do you know who Woody Gunnoe is? A Yes, sir.

Q Who is he? A He's a Union official.

Q Did you have a meeting with him on February the 11th? A I could have. I can't recall right at the time.

Q You don't remember?

MR. BAKER: He said I could have but I don't remember.

Q (By Mr. Jenkins) What is your answer? I'm sorry, I misunderstood you if you did say that. A I said I could have but I said I can't recall right at the time.

[fol. 186] Q Do you remember in February having any conversation with Woody Gunnoe? A Just like I said I could have but I don't remember.

Q If you don't remember if you met with him or not then you wouldn't remember anything he said, would you?

I'll put the question more clearly: Do you recall any statement that Woody Gunnoe made to you at any meeting in February that you may have had? A I can't recall.

TRIAL EXAMINER: Speak louder.

THE WITNESS: I can't recall it.

Q (By Mr. Jenkins) Do you remember signing any statement in the presence of Woody Gunnoe in February? A I could have I mean I just don't remember it at the time.

Q Do you remember signing any statement for Woody Gunnoe in March? Or April? A I can't recall. I mean I could have.

Q You're just saying you don't remember is that right? A I don't—I don't remember.

Q Now, you testified about a conversation that you had or you overheard out at the garage down at Gissel

between Charles Gissel and someone else, is that correct?

A Yes, sir.

Q And that Was Rush Moore, wasn't it? A Yes, sir.

[fol. 187] Q And what was the date of that conversation? A February the 10th.

Q How do you fix that date?

Who told you it was on February the 10th? A I just remember.

Q How do you remember that particular date of February the 10th? Who told you that it was the 10th?

MR. BAKER: I'm going to object to that.

TRIAL EXAMINER: This is cross-examination. He may answer.

MR. BAKER: There are two questions: How do you remember? Who told you?

TRIAL EXAMINER: All right. Who told you it was February the 10th? Let him answer.

MR. BAKER: The witness answered. He said he just remembered it.

Q (By Mr. Jenkins) Who told you it was February the 10th? A I told you I just remembered.

Q Did anyone else tell you it was February the 10th? A No, sir. I just remembered it.

Q How do you explain that you just remembered a particular date of February the 10th?

MR. BAKER: Objection. Argument.

TRIAL EXAMINER: Sustained. This is a matter for argument in briefs.

[fol. 188] MR. JENKINS: Will you allow us to vouch the record and permit him to answer the question?

TRIAL EXAMINER: You may make an offer of proof.

MR. JENKINS: You refuse to let him answer?

TRIAL EXAMINER: Yes. This is a matter for argument.

MR. JENKINS: Let the record show that we have requested the right to have the witness answer this question which was refused.

[fol. 195] MR. BAKER: Your Honor, while this discussion of the notes that the witness may have made

came up, I've been going through the Regional Office's files to see if perhaps there are some notes in there that I might have overlooked and which clearly counsel would be entitled under the Jenks Act, and while looking through there I have found a statement.

TRIAL EXAMINER: Are there notes attached to it?

MR. BAKER: No, there are no notes attached but it is a statement given by Mr. Frye to Jerald Scheinberg at the Labor Board which I have not to this time given to Mr. Jenkins primarily because I didn't know it was there. I am prepared to give him this statement; however, with Your Honor's indulgence I would like to go through it myself just to see what's in it. It was in the back of the file.

[fol. 196] MR. JENKINS: Your Honor, before Mr. Frye leaves, I would like to make a motion that the entire testimony of Mr. Frye be stricken from the record of this case on the ground that at the conclusion of his direct examination counsel for the Respondent requested all statements, Jenks Act statements made, in the possession of General Counsel, that the Trial Examiner indicated that that motion was granted and that thereupon Mr. Baker furnished me two purported statements here which he represented were all the statements which they had on [fol. 197] file and it was only after Your Honor had ruled with respect to these notes that Mr. Baker then comes up with what purports to be an additional affidavit here from this witness. I think that this holding back of papers under the circumstances is improper, it's certainly illegal grossly. It's a direct violation of the Jenks Act and a misrepresentation to Your Honor and to me as to his compliance with it and I think that it therefore means that this man's testimony because it involves this statement should be stricken.

TRIAL EXAMINER: Motion denied.

[fol. 199]

TOMMY LEE BURCHELL

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q State your name and address, please, for the record?

A Tommy Lee Burchell, 522 Seventh Avenue, Huntington.

Q Are you an employee of Gissel Packing Company?

A Yes, sir.

Q How long have you worked for them? A About seven months.

Q Seven months? A Or a little longer.

Q Who hired you? A Charles Gissel.

[fol. 200] Q What department do you work in? A I work in the shipping room and I was driving.

Q Driving a truck? A Yes, sir.

TRIAL EXAMINER: May I ask for my information, are the persons who drive the trucks the same persons Mr. Gissel described yesterday as peddlers?

MR. KARL H. GISSEL: No, ma'm.

TRIAL EXAMINER: They are not.

Q (By Mr. Baker) Were you aware of the Union campaign at the Gissel Plant going on? Did you know there was a campaign? A When I first went down there I didn't know a thing about it.

Q I see. Did you subsequently find out about it? A Yes, sir.

Q How did you find out about it? A Well, this boy, Tommy Mollihan, he first came up and told me about it.

Q While you were there did you have any conversation or hear any conversation by any supervisor relative to the Union, regarding the Union? A Once. Mr. Gissel talked about it.

Q When was that? A It was about a week after I was there.

Q Do you recall when about you started working there, what month it was in? A It was in February, about the early part of it.

[fol. 201] Q The early part of February and this was about a week later? A Yes.

Q A week after you started working? A Yes.

Q Where did this conversation take place? A Second floor, right beside—right where they put BRT hams in.

Q Was anybody else around at that time? A No, sir.

Q Tell us how it came about, what happened? A Well, me and Red was—

Q Red who? A I call him Red. We was down there and we was on a break and I was talking to him for a few minutes.

Q Sort of like a coffee break? A Coffee break, yes. And then I went back on my job.

Q Yes. A And then a little later Charles came and got me and took me up to the second floor.

Q Took you to another part of the plant? A Took me to another part of the plant.

Q For what purpose do you know? A I just thought it was to do something else.

[fol. 202] Q I see. But did you do something else when he took you to this other part of the plant? A No.

Q What happened? A He asked me where I knowed Red Mounts from.

Q I see. You had only been there about a week or so at the time, is that right? A About a week, yes.

Q So he wanted to know where you knew Red from? A Yes.

Q What happened? Did he say anything? A Well, I told him.

Q What did you tell him? A I told him, I said I knew him through his wife.

Q Then what? A Well, he said that, he asked me if he said anything to me about a Union, and I said no, I hadn't heard a thing about it.

Q He asked you who said anything to you about a Union? A Red.

Q You told him you hadn't? A I hadn't heard nothing, no.

Q Did he say anything else then that you recall? A Yes, sir, he said he was bad and I should stay away from him.

[fol. 203] Q From whom? A Red.

Q Stay away from whom? A Red Mount.

Q That he was what? A He would be bad for me, you know, cause me trouble.

Q Did you have any other conversation with Mr. Gissel that you can recall or hear any conversation? A Well, in about April, I think it was, that me and another employee was walking through the sausage room, Lawrence Hysell, and he owed me some money.

Q Who owed you some money? A Lawrence Hysell.

Q I see. A So I stopped there for a couple of minutes to write down how much he owed me and about that time Charles come through the sausage room.

Q What happened? A Well, this boy went on.

Q That's Hysell? A Yes. He went on and I started to go through to go out in the office or outside and Charles stopped me.

Q What did he say to you then, if anything, about the Union? A Well, he asked me—

[fol. 204] MR. JENKINS: Objection, Leading.

TRIAL EXAMINER: What did he say to you?

THE WITNESS: He asked me if the boy was trying to get me to go to a Union meeting or sign me up, and I told him no.

Q (By Mr. Baker) Was that all of the conversation? A Yes, I walked away.

Q Did you ever sign up with the Union? A Yes, sir.

Q I show you what has been marked as General Counsel Exhibit 10-GG for identification and ask you if you signed this card.

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10-GG for identification.)

A Yes, sir.

Q Is that your signature? A Yes, sir.

Q Did you sign it on or about the date indicated May the 13th? A I signed it, the date, my name and my address, all of that.

MR. BAKER: Your Honor, this, as indicated, this document is dated May 13th, 1965. It was not in the demand period but at this time I'm offering General Counsel's Exhibit 10-GG for identification.

[fol. 205] MR. JENKINS: Do I have a copy of that? I don't believe I have a duplicate of that.

MR. BAKER: Mr. Jenkins, let me show you the original.

(Document handed to Mr. Jenkins by Mr. Baker.)

MR. JENKINS: We object to this, Your Honor, on the same grounds as to the other General Counsel's Exhibits 10. It certainly is not material since it was signed on May 13th.

TRIAL EXAMINER: It has nothing to do with the Union's majority at the time of the demand. It will be received.

MR. BAKER: That's correct. I just wanted it in the record for any future reference. However, I'll withdraw the document if it satisfies Your Honor and leave the statement of the witness in the record that he did sign the card.

TRIAL EXAMINER: It's up to you. I have received it. In view of the objection to it, if you want to withdraw it, you may.

MR. BAKER: I'll leave it.

(Thereupon, the document heretofore marked General Counsel's Exhibit 10-GG for identification was received in evidence.)

MR. BAKER: I have no further questions of this witness.

MR. JENKINS: Your Honor, in view of the incident that occurred before I request that the Trial Examiner personally check the records of the General Counsel here as far as any Jenks Act statements in order to determine that we have them all.

[fol. 206] MR. BAKER: Madam Examiner—

MR. JENKINS: I further ask Your Honor that they be produced for cross-examination purposes.

MR. BAKER: I object strenuously to the implication of counsel. Now, he's called me a shyster in this hearing room today among other things. I thought I adequately explained why that statement was not given to them.

TRIAL EXAMINER: Leaf through your file there in my presence.

MR. BAKER: I have done it many times.

TRIAL EXAMINER: And see if you have—

MR. BAKER: But I demand that counsel at least maintain some semblance of decorum of an attorney.

TRIAL EXAMINER: I think what has happened he's asked you to be very careful and check your file and—

MR. BAKER: I don't object to that. I'm objecting to the implication—

TRIAL EXAMINER: I understand. Go ahead.

MR. BAKER: —very strenuously.

I trust the Trial Examiner will note not only are there no statements from this witness but there are no statements in the file at all so that I should not be put to this degrading task.

TRIAL EXAMINER: I have not naturally seen each document but I'm watching you go through and as far as [fol. 207] I can see there is nothing which appears to me at this distance to have been an affidavit.

MR. BAKER: But I should not be put to this degrading task each time a witness—

Are you satisfied?

TRIAL EXAMINER: Yes, if you've checked to be sure—

MR. BAKER: I shall go through these papers here.

TRIAL EXAMINER: —that you are prepared to furnish all that are in your possession. You are requested to do so.

(Document is handed to Mr. Jenkins by Mr. Baker.)

MR. BAKER: Let the record show that the attorney for the Government is handing all that he has to Mr. Jenkins.

TRIAL EXAMINER: We'll take five minutes.

MR. BAKER: I trust Mr. Jenkins does not consider a Federal Judge in the same light he does Federal employees.

TRIAL EXAMINER: If you take less, let me know.

MR. JENKINS: Thank you, mam.

(Recess.)

TRIAL EXAMINER: On the record.

CROSS-EXAMINATION

BY MR. JENKINS:

Q Mr. Burchell, after you had this conversation with Charles Gissel that you referred to earlier, who was the first person, if anybody, that you told this to? A No one.

Q You didn't tell anybody about it? A Let's see. [fol. 208] Yes, I told Red.

Q Red Mount? A Yes.

Q When did you tell Red Mount about it? A I'm not sure. It might have been that day or it might have been a little later on. I'm not sure.

Q Was it within a few days of that? A I'm not sure what day I told him.

Q Now, other than that occasion who else did you give any information about the conversation to? A I'm not sure about that. I think I told one other person but I'm not—

Q Do you know who it was? A Not right offhand.

Q Do you know the name of the person? A I think it was Lawrence Hysell but I couldn't swear to it.

Q Do you know when and where you told him about it? A Just while working.

Q Who else other than those two people? A I believe I told my wife.

Q Anybody else? A No, sir.

Q Haven't discussed it with anyone else? A No, sir. I mean—

MR. BAKER: I want to at least get the time established as to when.

[fol. 209] Q (By Mr. Jenkins) At anytime? A No, sir.

Q In your conversations with Mr. Gissel, did he make—in discussing Mr. Mount, the fact that Mr. Mount was always late for work, was anything said at the time of these conversations that you testified about earlier, was anything said on the subject of Mr. Mount being regularly late for work? A He never said nothing about being late. He just said he was bad for me; he would cause me trouble.

Q Did he make any reference to the fact that he was always late for work? A No, he did not.

Q Nothing was said about that? A No.

Q Where were you at the time that you signed that authorization card that's been marked Exhibit 10-GG in this case? A I was up at Red Mount's house.

Q Who else was there besides you and Mount, anybody? A I believe his wife was there and the electrician. I've been up to his house a couple of times. One time his wife was there and another time the electrician was wiring his house.

[fol. 210] REDIRECT EXAMINATION

BY MR. BAKER:

Q Mr. Burchell, did you give a statement to someone from the Labor Board? A Yes, sir.

Q Do you remember who it was? A No, sir. I can describe him but I don't remember his name.

Q What did you tell him?

MR. JENKINS: Objection.

TRIAL EXAMINER: Overruled.

MR. JENKINS: This is not proper redirect examination.

TRIAL EXAMINER: He may answer.

Q (By Mr. Baker) What did you tell the National Labor Relations Board? A He wrote down and I just told him everything about me having the conversation with Mr. Gissel on those two days, and then me going up to Red's house and signing up, and what was said.

Q Now, Mr. Jenkins asked you who all you talked to about this thing and you told him I believe Mr. Hysell and Red Mount and your wife. You didn't tell him about Mr. Scheinberg.

MR. JENKINS: Objection. That speaks for itself. It's in the record.

MR. BAKER: I just wanted to know why he didn't tell him.

[fol. 211] TRIAL EXAMINER: He may answer.

[THE WITNESS] Well, I just like—I'm not sure—well, I talked to him about it and I talked to him and then because Charles asked me if he signed me up for the Union and that's what I told Hysell, and I was talking to Red, I just talked to him because I replied to him.

Q (By Mr. Baker) That's not my question.

MR. JENKINS: Motion to strike the answer. This is not proper redirect.

MR. BAKER: I just was wondering, Mr. Jenkins asked who he talked to.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) You didn't tell him you talked to the Board. A Oh—

MR. JENKINS: Objection. Now, he's making statements into the record. These are not questions. He's arguing with the witness.

MR. BAKER: I just wanted to know why.

MR. JENKINS: He's arguing with his own witness.

TRIAL EXAMINER: Overruled.

MR. BAKER: I'm not arguing.

Q (By Mr. Baker) Why didn't you tell Mr. Jenkins you talked to the Board agent?

MR. JENKINS: This is asking him as to his mental [fol. 212] state of mind as to why he did something. It's not proper.

TRIAL EXAMINER: This goes to credibility. He may answer.

[THE WITNESS] The reason I didn't say nothing about the Board was because I had given him this statement and it's in the record. That's why I didn't say anything right now.

Q (By Mr. Baker) You just thought—

TRIAL EXAMINER: His answer may stand.

MR. BAKER: All right.

MR. JENKINS: Motion to strike his answer on the ground—

TRIAL EXAMINER: You have a standing objection.

MR. JENKINS: Thank you, Your Honor.

[fol. 214] ELMER BERNARD MAYNARD

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q State your name and address, please, for the record?

A Elmer Bernard Maynard.

1531 Washington Avenue.

Q Have you moved since you signed that paper?

TRIAL EXAMINER: How do you spell your last name?

THE WITNESS: M-a-y-n-a-r-d.

Q (By Mr. Baker) Are you presently employed? A Yes.

Q Where do you work? A Gissel Packing Company.

[fol. 215] Q How long have you been there, Mr. Maynard? A To my knowledge, close to a year.

Q Who hired you? A Charles Gissel.

Q What work do you do? A Bone hams.

Q Did you sign a card for the Union? A Yes.

Q I show you what has been marked for identification as General Counsel Exhibit 10-HH, and ask you if that is your signature?

(Thereupon, the above-mentioned document was marked General Counsel Exhibit 10-HH for identification.)

A Yes.

Q Did you sign it on or about the date indicated, January 21, 1965? A Yes.

MR. BAKER: I now offer General Counsel Exhibit 10-HH into evidence.

MR. JENKINS: We object to the admission of this document on the same grounds as assigned in connection with the other General Counsel Exhibit 10.

TRIAL EXAMINER: I would like to have you restate them. Are you making all of the same objections even though the witness who actually signed the card has identified it as the card he signed?

[fol. 216] MR. JENKINS: Yes, sir.

TRIAL EXAMINER: All right. It will be admitted.

(Thereupon, the document heretofore marked General Counsel Exhibit 10-HH for identification was received in evidence.)

Q (By Mr. Baker) Mr. Maynard, did you have any conversation or overhear any conversation with a supervisor or boss of Gissel Packing Company wherein the Union was mentioned? A Only once downstairs in the boning room where we were boning hams, you know, and he said he didn't give a damn about the Union, when he let Red go that day.

Q Who said that? A Charles Gissel.

Q You say that's the only conversation you recall? A About the Union.

Q Do you recall any other conversation that you had with Mr. Gissel, Mr. Charles Gissel, wherein he was talking to you or to someone else in regards to the Union? A I can't think of none right now.

Q All right. What day did you say that was? A I don't know for sure but I think around February the 18th. I don't know for sure.

Q What happened at that time, did you say that [fol. 217] Mount was fired? A Yeah. He told me to bone hams and put them in pans by 12:00, but I never heard him tell Mount, and he come down there and he jumped him and said he told him to bone hams and have them in pans by 12:00 but he never told him, he told me; and I forgot to tell Mount.

Q Then what did he do? A He told him to get out.

Q Did you say he said something about the Union? A Yeah. He told him he didn't give a damn about the Union, he could stick it up his ass.

Q All right. At that time, let me ask you this, did he say anything to you about you and the Union? A All he said was, asked me if they ever brainwashed you.

Q Asked you if who ever brainwashed you? A Well, Mounts.

Q How did he say that? A He's just—he's asked me two or three times if I've ever been brainwashed. He just said, "Have they brainwashed you?" He never said nothing else.

Q He didn't say anything on the day he fired Mount to you, did he say that that day if he had brainwashed you, do you recall? A I couldn't say for sure because on and off he said it quite a bit. I don't know just how many.

[fol. 218] Q Did he ever say anything to you in regards to a strike, or something in that nature?

MR. JENKINS: Just one minute. I move to strike this testimony about brainwashing. There's no allegation in the complaint about this.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) What was your answer?

I said did he say anything to you in regard to a strike or anything like that? A He asked me if I was going to walk out if they did. I asked him what he was talking about and he never said nothing else.

MR. JENKINS: Motion to strike.

TRIAL EXAMINER: When you say "he," whom do you mean?

THE WITNESS: Huh?

TRIAL EXAMINER: When you say "he," whom do you mean?

THE WITNESS: Charles asked me if I was going to walk out—

TRIAL EXAMINER: Charles Gissel?

THE WITNESS: Yes.

Q (By Mr. Baker) Now, he asked you if you were going to walk out, did he explain what he meant by walking out? A No, he turned and walked off.

MR. JENKINS: Motion to strike. This is not in the complaint.

TRIAL EXAMINER: You have a standing objection. [fol. 219] Q (By Mr. Baker) Do you recall anything else that he said at that time when he was talking about walking out? A No, sir.

Q Did you give a statement to the Labor Board? A Yes.

Q Is this your signature (showing document to witness)? A Yes.

Q Is this your initial here? A Yes.

Q I ask you to just read this,—

MR. JENKINS: Object.

Q (continued.) —the last paragraph to yourself.

MR. JENKINS: This is highly improper. He's cross-examining his own witness from an affidavit there, and he's handing the witness this statement here to read over in order to give him something to testify from. This is highly improper.

TRIAL EXAMINER: Is this for refreshing?

MR. BAKER: I think the witness has exhausted his memory. He says he recalls nothing further. I'm simply showing him—

TRIAL EXAMINER: You may refresh his recollection. It will go to the weight given and the quality of the testimony.

Q (By Mr. Baker) Just that one paragraph there, does that refresh your recollection now as to what was [fol. 220] said at that time? A Yes, sir, right there.

Q That was true, would you say, what you read? A Yes.

Q Just tell the Trial Examiner what was that conversation now when Mr. Gissel asked you if you were going to walk off with the rest of the men.

MR. JENKINS: We object to this. Handing this witness written out statements to give him something to look at and testify from is not proper.

TRIAL EXAMINER: You have your objection.

Q (By Mr. Baker) Does it refresh your memory as to that conversation on February 18th? A I don't know why but he got mad. He was mad before he come down there, you know, he works down there in shipping all the time. He's back and forth.

Q Charles? A Yes.

Q All right. Just tell what happened. A He come downstairs mad and he jumped us, jumped Red Mount there first, and he said that he told him to bone the hams until he had enough hams, to put them in pans by noon, but he never told Mount, he told me; and I forgot to tell him, you know, and that's when he said about the Union. He said he didn't give a damn, we could have the Union, and—

Q I'm talking about this statement, though, that you [fol. 221] just looked over here about when he asked you if you were going to walk out.

MR. JENKINS: This is gross error to permit a witness to read a statement.

TRIAL EXAMINER: I think you showed him and he's still repeat—

MR. BAKER: I think I misled him myself by saying February 18th.

TRIAL EXAMINER: Do you recall any other conversation?

THE WITNESS: No.

Q (By Mr. Baker) The conversation that you described—

MR. JENKINS: I object, Your Honor. Here he is cross-examining his own witness.

TRIAL EXAMINER: There is such a thing as refreshing the witness' recollection.

MR. JENKINS: When the witness has replied to your question, Your Honor, he said he remembers nothing else. In all sense of fairness—

TRIAL EXAMINER: It goes to the weight of the testimony.

MR. BAKER: I can understand. The witness has testified that Mr. Gissel asked him if he was planning to walk out.

Q (By Mr. Baker) Now, just tell us about that conversation.

MR. JENKINS: Now, Your Honor, he has answered your question on this. He's been prompted here on it and he's answered that this was the extent of his knowledge even after being prompted in answer to the Examiner's [fol. 222] question.

TRIAL EXAMINER: Do you have any further recollection of what was said in that conversation?

THE WITNESS: I don't know about walking out. All I reckon he meant if they went on strike.

TRIAL EXAMINER: Do you remember anything else that was said?

THE WITNESS: No, mam.

TRIAL EXAMINER: Sustained.

MR. BAKER: He doesn't say nothing else was said, Your Honor. He simply says he doesn't remember anything else.

TRIAL EXAMINER: But you have shown him a document and he has still not—

Q (By Mr. Baker) Did you read this last statement?

MR. JENKINS: I object to this.

TRIAL EXAMINER: Mr. Baker, apparently the reading of the affidavit would not refresh his recollection.

MR. BAKER: Just let me ask him this question.

Q (By Mr. Baker) Could you read it?

MR. BAKER: I just want to know.

TRIAL EXAMINER: Can you read?

THE WITNESS: Some. That writing I can't hardly read it.

TRIAL EXAMINER: Did you read what was written on there?

THE WITNESS: I couldn't read all of it, what I could have.

[fol. 223] TRIAL EXAMINER: Did you?

THE WITNESS: Yes.

TRIAL EXAMINER: Can you tell me what part you could not read?

THE WITNESS: That last part down there I couldn't hardly read it.

MR. BAKER: That's the part I wanted him to read.

I hesitate to read it to him myself.

TRIAL EXAMINER: I don't want you to read it to him. Let him look at it and if he wants to come up and ask me, if I can help him read what's on there, I'll be glad to do so and then Mr. Jenkins can check whether my reading of it is correct.

Q (By Mr. Baker) (Document is handed to witness.) Can you read this, just this last part here? That's all. If you can't read it all, say so. A I can't make out these words, I can't read that way, writing that way.

MR. BAKER: I can't read that to be perfectly honest with you.

TRIAL EXAMINER: May I see it? (Document is handed to the Trial Examiner.)

Mr. Jenkins, do you want to look at it to see—

MR. JENKINS: No, mam. This is just gross error in taking a witness on cross-examination, of his own witness, and trying to lead him by this statement here when [fol. 224] the witness has testified that he has exhausted his recollection of the events that he's been inquired about, and I understood my objection had been sustained. Apparently, I was mistaken.

TRIAL EXAMINER: Personally, I don't know what Mr. Baker's questions are about.

MR. BAKER: I shall withdraw the question. I have no further questions of this witness.

MR. JENKINS: Motion for Jenks Act statements.

MR. BAKER: Let the record show General Counsel has furnished Mr. Jenkins all statements in the possession of the General Counsel.

TRIAL EXAMINER: We'll take a five minute recess and let me know.

(Recess)

TRIAL EXAMINER: On the record.

MR. BAKER: I have one more question on direct if I may.

TRIAL EXAMINER: Very well.

Q (By Mr. Baker) Mr. Maynard, what are your hours of work now? A I go to work at six and off anywhere from four till five.

Q In the afternoon from six in the morning? A Yes.

Q Have you gone to work any hours other than six? A Yes, 5:30.

Q 5:30. A. (Nods).
[fol. 225] Q Do you recall when you started working at 5:30? A Well, here a while back, I worked from 11:00 till 5:00.

Q Eleven at noon? A 11:30, that's when lunch is. I started at 12:00, it would be from 12:00 on till 5:00.

Q When were you working this 11:30, 12:00 till 5:00? A I don't know the exact date but I remember Mount and Frye would leave and I'd go to work. They'd leave at 12:00, 11:30 and at 12:00 I'd go to work and work till 5:00.

Q Now, just before you started working at 12:00 what hours had you been working? A Before I started that?

Q No, before—as I understand it, you say you normally worked from 6:00 in the morning until 4:00 or 5:00 in the afternoon. A Yes.

Q You said there was a time when you started to work at 12:00 noon and worked till 5:00. A Worked till 5:00.

Q And Mounts and Frye till 11:30? A They worked from 5:30, I believe it was, until 11:30.

Q Then you came on at 12:00? A Yes.

Q Now, did someone tell you to do that? A Charles Gissel.

[fol. 226] Q What did he tell you?

MR. JENKINS: Objection. This is immaterial.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) What did he tell you? A He just told me to come in at 11:30—at 12:00, 11:30 till their noon, and come in at 12:00. He didn't give me no reason. He just told me to come in.

Q Did he tell you how long to do that? A No.

Q How long did you work those hours? A Till Mount and them was fired.

Q Then what happened? A I started to work—

MR. JENKINS: Object. Conclusion.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) Then what happened? **A** I started to work at 5:30, after awhile I mean he put it up till 6:00.

Q Now, when you started at 5:30, how did you know that you were to go to work at 5:30? **A** Charles Gissel told me to come in.

Q What did he say to you at that time? **A** He just told me to come in at 5:30 that morning.

Q That was the morning when? **A** After they had been fired.

[fol. 227] **Q** Did you attend any Union meeting, by the way? **A** Yes.

Q Relative to that Union meeting, using that as a guide, do you remember when Mr. Gissel told you to come in at 11:30, was it before or after the meeting? **A** It was before the meeting.

Q Before the meeting? **A** I believe so.

Q You're not sure? **A** I'm not sure. I couldn't say for sure.

Q Did he tell you what Frye and Mount were doing? **A** What?

Q He didn't say what hours they would work? Do you recall what hours they were working? **A** Yeah, the guys around the factory told me they were working 5:30 till 11:30.

Q And then you would come in at 12:00 **A** Yes.

CROSS-EXAMINATION

BY MR. JENKINS:

Q Mr. Maynard, you testified here about a conversation that you had about February the 18th, some things that Charles Gissel said, do you recall your testimony about that, February the 18th? **A** I remember talking— [fol. 228]

Q A conversation referred to as downstairs. **A** That was when he fired Red, wasn't it?

Q Is this the time you're referring to? A Yes.

Q To whom did you report this conversation that you heard on that day for the first time after you heard it? Whom did you tell about it? A The Union man, I don't know his name.

Q You don't know what his name is? A No, but I can point him out.

Q All right. A He's in the room.

Q One of the fellows in here? A They call him Red I think.

Q They call him Red? A What's his name?

Q Well anyway—

MR. BAKER: We can identify him.

MR. JENKINS: Red Cass?

TRIAL EXAMINER: I assume it's Red Cass.

Q (By Mr. Jenkins) Cass is his name? Big, heavy-set fellow? A Yeah, short.

Q Short, heavyset fellow? A Yes.

[fol. 229] Q When did you tell him about this? A I don't know the date.

Q Well, how soon after it occurred did you tell him about it? A I don't know. They called me over to make my statement. I don't remember the date.

Q Well, was it within a day or two after the event occurred? A I couldn't say.

Q They called you over to make a statement about it? A Yeah.

Q Where was this? A Over at Colonial Inn, I believe.

Q And you did make a statement there? A Yes.

Q You signed something, they wrote it out? A Yes.

Q And did they give you a copy of it? A Yes.

Q And did—do you have a copy of it with you? A No.

Q Do you know where it is? A No.

Q Has anyone talked to you this morning about statements or given statements in the room in there? A What I give?

[fol. 230] Q Yes. A No.

Q Nobody said anything to you about statements this morning? A No.

Q Or any other statements? A No. They never talked to me this morning.

Q Or anybody else? A No.

Q Now—

MR. BAKER: What was the question? "Anybody else," what do you mean?

TRIAL EXAMINER: Talked to anybody else.

MR. BAKER: Did someone talk to anybody else, is that the question?

TRIAL EXAMINER: About statements.

MR. JENKINS: Yes, correct.

MR. BAKER: Nobody talked to you?

THE WITNESS: No. The guys talked to me.

MR. BAKER: Is that your question, Mr. Jenkins? I'm not sure I understood.

TRIAL EXAMINER: I thought the question was had he heard anyone else talk to any of the other witnesses.

THE WITNESS: You mean to anybody else?

TRIAL EXAMINER: Yes.

THE WITNESS: I was talking to Red and he was talking to me.

[fol. 231] TRIAL EXAMINER: No, about talking to other witnesses. Did you hear anyone else say anything to other witnesses about statements?

THE WITNESS: Yes.

Q (By Mr. Jenkins) What was said? A Red there.

Q What did he say?

MR. BAKER: It's all right.

[THE WITNESS:] I didn't pay any attention. He was carrying on with the other guys.

Q (By Mr. Jenkins) You're talking about Red Mount? A No, the other one.

Q Burchell? A No, I think probably Frye. Tommy and the one, I call him Red.

Q What did he say? A I don't know. He was joking with the other guy, telling jokes.

Q Why did you turn to Mr. Baker there a minute ago and the Union representative and ask if you ought to tell about it? Why did you have to ask them? A The only

thing that was, was he asked how he met Mount, through his wife, and that's all I know. That's all I heard.

Q We're talking about statements, Mr. Maynard. A That's all I heard. They didn't have any statements. He [fol. 232] was asking how he met Red, and he said through his wife.

Q What statement did Burchell say, anything else other than that? A I don't know. They were telling jokes.

Q You have told me that you reported this conversation to I think it's Red Cass, the Union representative, the conversation that happened downstairs. Now, who else did you report this conversation to after that, at any-time after that? A Nobody I can recall.

Q Well, weren't you interviewed from somebody from the National Labor Relations Board?

MR. BAKER: What was the question?

TRIAL EXAMINER: Weren't you interviewed by somebody from the National Labor Relations Board.

Address your answer to Mr. Jenkins.

MR. BAKER: Do you understand the question?

THE WITNESS: Did anybody else you mean about the—what I said?

MR. JENKINS: I ask the reporter to please read the question.

(Question read.)

TRIAL EXAMINER: By interviewed, do you understand the word "interview?" Did somebody talk to you?

THE WITNESS: Somebody talked to me.

TRIAL EXAMINER: Go ahead, answer.

[fol. 233] [THE WITNESS:] He asked me about it.

Q (By Mr. Jenkins) Who? A Asked me what they said, what's his name.

MR. BAKER: Jack Baker.

THE WITNESS: Jack Baker.

MR. BAKER: General Counsel.

THE WITNESS: I don't know the Union, you—

MR. BAKER: No, I'm with the Government.

[THE WITNESS:] (Continued) That's all. That's the only person I ever, after I talked to Red what's-his-name in there.

Q (By Mr. Jenkins) In other words, the only person that you talked to was Red Cass and Mr. Baker, is that what you're saying? A Yes. Now, wait a minute. It wasn't Red Cass, I didn't talk to him. He was the one that took me down there but there was another guy, I don't know who it was, over in another hotel room. He took me over there. He was the one that wrote the stuff down.

Q Who was this, do you know? A I don't know.

Q Do you know when it was that you went down there and wrote this stuff down? A The same day Cass took me down.

Q That would have been how long after the incident occurred? A I don't know.

[fol. 234] Q Was it within a day or two or a month later? A I couldn't tell you for sure. I wouldn't want to say something and tell a lie about it.

Q You don't have any idea at all how long it was? A No.

Q When the incident occurred you stated specific conversations here that took place and I asked you then who you talked to about this and you said, well, you told Red Cass about it? A I never—

Q Now,—or you said Red; I think, he's a Union fellow.

Now, what I'm asking you, are you saying you don't have any idea as to how long afterwards it was you talked to him? A How long after it happened?

Q Yes. A That's what I said, I don't know.

Q No idea? A No idea. I ain't good on dates.

Q Anyway, sometime later on you went down to some hotel room and somebody else took a statement from you, is that right? A Yes.

Q And you don't know who that was? A No.

[fol. 235] Q And was Red there? A No, just me and that guy.

Q Now, did this guy identify himself, tell you who he was? A Yeah, he showed me papers but I forget who he was.

Q You don't remember who he was? A I forget the names. I can't remember names.

Q Who had made the arrangements for you to go down and see him? A Cass, evidently.

Q But didn't stay? A Cass took me down there and he took me over to that guy's hotel room. They were in separate rooms.

Q And you can't remember who this guy was working for or his name? A No. He just took a statement is all I know.

Q Well, what did he ask you about? A He asked me what happened.

Q Did you tell him? A Yes.

Q Did he write it down on a paper? A Yes.

Q Did you sign it? A Yes.

Q Did you swear to it? A I swore to it. —

[fol. 236] Q Is that the only time you've sworn to any statement in this whole business except today? A Yes. Now, when they asked me to join, I signed up.

Q But you didn't swear to that? A No, I—

Q Did this fellow write down there what you told him at that time? A What happened?

Q Yes. A Yes.

Q And before you signed it and swore to it, did you read it or did he read it over to you? A He read it and I read it, too.

Q So he read it to you and then you read it yourself, right? A Yes.

MR. JENKINS: I would like this affidavit that was tendered by the General Counsel be marked Respondent's Exhibit Number 2 for identification.

MR. BAKER: I would like to question the purpose of having that document marked for identification.

TRIAL EXAMINER: Wait and I assume we'll find out.

(Thereupon, the above-mentioned document was marked Respondent's Exhibit No. 2 for identification.)

Q (By Mr. Jenkins) Elmer, this affidavit of yours, marked Respondent's Exhibit Number 2, R-2 stands for [fol. 237] Respondent's exhibit, was this your signature on there? A Yes.

Q And it's dated the 24th of February, 1965, it says, "subscribed and sworn to before me this 24th day of January, 1965," and it's got Jerald Scheinberg, Field Examiner, NLRB. Is this the paper that you signed? A Yes.

Q And this is the paper that you swore to, right? A Yes.

MR. JENKINS: We move to admit it into evidence.

[fol. 241] TRIAL EXAMINER: Very well. For that purpose it will be admitted.

[fol. 252] JERRY LEE FRYE

resumed the stand and testified further as follows:

CROSS-EXAMINATION (Continued.)

BY MR. JENKINS:

Q Mr. Frye, were you able to find your notes? A No, sir.

Q Where are they? A I don't know.

Q When is the last time you saw them? A About a month, a month and a half ago.

Q You didn't look them up in connection with getting ready for your testimony here? A No, sir.

Q You thought it was important to write it down at the time it happened, didn't you? A Yes, sir.

Q You didn't think it was important to look it up when you were going to come in?

MR. BAKER: Objection. That's argument.

[fol. 253] TRIAL EXAMINER: He just said he didn't look at them, Mr. Jenkins.

Q (By Mr. Jenkins) Where were these notes the last time you saw them? A I had them in a shoe box with all my check stubs.

Q Is that shoe box still at home? A Yes, sir.

Q All those check stubs still there? A Yes, sir.

Q Everything there but the notes? A Yes, sir.

Q And they just disappeared?

MR. BAKER: Objection.

TRIAL EXAMINER: You did not see them?

THE WITNESS: I did not see them.

TRIAL EXAMINER: And you looked?

THE WITNESS: Yes, sir, I looked. I got two, three drawers, I looked in all of them, I couldn't find them.

Q (By Mr. Jenkins) Where about is the shoe box that you put them in? A It's in the dresser drawer over by the window.

Q And they were there a month ago, right? A A month or month and a half ago. It was in there looking at my check stubs, I had them in a little book.

[fol. 254] Q And when you went back and looked today is the little book there? A No, sir.

Q And the book was what your notes were in? A Uh-huh.

Q And your check stubs are still there, though? A Yes, uh-huh.

Q Everything is there except the book with the notes? A I don't know if all the check stubs were there.

Q They appeared to be? A They were out of the box, some of them. I guess my aunt looked through them. They might have been in there, I don't know. She stays there, she gets in the drawer sometimes.

Q Does she just look for notes and not check stubs? A I don't know what she took.

MR. BAKER: I object. Ask that be stricken—

[THE WITNESS:] (Continued.) She gets in my letters and things.

MR. BAKER: Would you grant that?

TRIAL EXAMINER: It may stand.

Q (By Mr. Jenkins) I want to go back to the time that you were down at the hotel when you said you saw Terry Lewis in a phone booth. Where were you standing or where were you when you saw him in the phone booth?

A I was coming by as I was going in. He was sitting in the phone booth.

[fol. 255] Q When you were coming by was anyone with you? A There could have been. I don't remember. There were two or three of us standing outside but I don't know if anyone walked in with me or not.

Q What are the names of the two or three that were standing outside? A Elmer Maynard.

Q You passed him standing outside when you went in? A Yes, sir.

Q Who else? A Kenneth Adkins.

Q He was outside with Maynard? A Uh-huh.

Q Who else? A And Mustache.

Q Who was that? A I don't know what his name is. He's Kenny's brother.

Q Cordell? A Yes.

Q Adkins. Anybody else? A There could have been but that's about all I can remember right at the moment.

Q When you went in the hotel, did Elmer Maynard, Kenneth Adkins or Cordell Adkins—Mustache—did any of these gentlemen go in with you? A They could have come in behind me, I mean I don't know.

[fol. 256] Q They didn't accompany you in? A They were back behind me, they could have come in behind me.

Q When you passed Lewis, saw him in the phone booth, what did you do? A I just looked at him.

Q Then what did you do? A He looked at me.

Q Then what happened after that? A He was talking.

Q Then what happened after that? A I went on and went through.

Q And you went on where? A Upstairs.

Q Was that all that hapened? A That's all I remember.

Q Now, you testified with respect to a conversation in the parking lot on Monday sometime with Charles Gissel when he was listening to a radio in the car, stock market reports, do you remember that? A Yes, sir.

Q Where were you standing at the time when you overheard this conversation that you testified about? A I don't know which side of the car I was standing on.

[fol. 257] Q Were you near the car, though? A We were near the car.

Q When you say "we,"— A Red Mount.

Q Is that Herbert Mount? A Red, Herbert Mount.

Q Who else? A That's all I remember.

Q No one else there? A There could have been somebody else there but I wasn't paying much attention.

Q Now, on the Thursday that you came in and your timecard was not there, then you had a conversation with Charles Gissel that you testified about in the office in which you testified he told you that you all had walked off the job, remember that statement? A Yes.

Q All right, now, when you had this conversation with Charles Gissel, who else was there? A Me and Herbert Mount.

Q Who else? A Some of the boys over in the sausage room.

Q Do you remember the names of any of them? A No, I don't remember who it was at the time, I wasn't paying much attention to them.

[fol. 258] Q You couldn't identify them now? A I might if I seen them.

Q You don't know their names? A One was—

Q Did they have nicknames? A George.

Q George. And he works in the sausage room? A Yes.

Q And? A Bailey, I believe.

Q Another man named Bailey? A Yes.

Q And Bailey that works in the sausage room? A Yes, sir.

Q All right. Anybody else? You've named Herbert Mount, a man named George, another man named Bailey.

A I believe Charlie Hutchinson was—

Q Charlie Hutchinson. Anybody else? A Let's see.

Q Where does Charlies work? A He works in the sausage room.

Q Can you think of anybody else? A There could have been another one but I don't remember now.

[fol. 259] Q That's all you remember? A Yes.

Q You testified about a conversation in February between Charles Gissel and Rush Moore. At the time this conversation took place who else was there? A Me and Charles and Rush Moore as far as I know.

Q Anybody else? A No, not as far as I know.

Q Just the three of you? A Uh-huh.

Q I believe you testified that that same day in the

afternoon Charles Gissel asked you if you knew anything about the Union. When you say this conversation took place who else was there? A There wasn't nobody, just me and him, me and Charles.

MR. JENKINS: That's all I have.

REDIRECT EXAMINATION

BY MR. BAKER:

Q You met Mr. Jenkins before today? This is Mr. Jenkins (indicating).

MR. JENKINS: That's not proper redirect.

MR. BAKER: I think in light of all the business about the notes and so forth that I am at least entitled to ask him that question.

TRIAL EXAMINER: You may answer.

[THE WITNESS:] Yes, sir, I think I did.
[fol. 260] Q (By Mr. Baker) Where did you meet him? A In the office down at Gissel.

Q And what was he doing, do you know? Why were you down in the office? Were you in the office? A I was in the shipping room and Charles come up and asked me, he said, "There's a man in the office wants to see you."

Q Did you go up to the office? A Yes, sir.

Q Who was there? A Just me and him and another man.

Q Did those people introduce themselves to you? A He said something about he was from Cincinnati and he was—had something to do with the Labor Board.

Q Then what did he do after that? A He said this guy—he shut the door so nobody could hear and had everybody else out, just me and him and the guy that was taking notes, and he said that, the first thing he asked me about was how come I didn't want to shake hides, and he told me that he was from Cincinnati and he was working or something about the Labor Board. And he said, "Don't be afraid to tell me anything. Just tell me everything you know."

Q Did he ask you questions? A He asked me questions.

Q Do you know if the other man was taking it down? A Yes, sir.

[fol. 261] Q Did they swear you in? Before they took the questions, did they ask you to raise your right hand and swear? A No, sir.

Q Did you ever see any of these questions written out some way that you could read them? A You mean when he was writing them down?

Q Yes. A No. He sat off to the side. He asked me the question (indicating), and the other guy wrote what I said.

Q Did he ever type them up or something and bring them back, something for you to read? A No.

Q Like the Labor Board man did with the statement here? A No, sir.

Q Did you ever sign them? A No, sir, I didn't sign them.

MR. BAKER: That's all I have.

MR. JENKINS: Motion to strike. Not proper re-direct.

TRIAL EXAMINER: Overruled.

Do you have any further questions?

RECROSS-EXAMINATION

BY MR. JENKINS:

Q You do know my name, don't you? A I don't know your first name. I know you're Mr. Jennings.

Q My name is what?

MR. BAKER: Jennings.

[THE WITNESS:] Jennings.

[fol. 262] Q [By Mr. Jenkins] You have referred to a conference down in the office at Gissel Packing Company, is that right? A Yes, sir.

Q Now, who was it that told you they were from Cincinnati? A You two guys, or you, or I don't know if he said it, or one of you said it, was from the Labor Board from Cincinnati.

Q And said we were from the Labor Board? A I'm pretty sure you did.

Q Now, you be careful about this. Are you testifying under oath here that I told you I was from the Labor Board? A Yes, sir.

Q And I told you that I was from Cincinnati? A Yes, sir.

Q And I remind you about your oath. Is that correct under oath? A Yes, sir.

[fol. 264] MR. JENKINS: The second thing, by reason of some testimony that was given immediately prior to our adjournment at noon it appears to me that it is going to be necessary for me to be a witness in this case because a witness testified that I represented to him that I was an agent of the Board and I was from Cincinnati. I categorically deny this as untrue and I think that it is going to be necessary for me to be a witness in the case because I think that information on the whole line of questioning was irrelevant to any charge in this proceeding as grounds before Your Honor, but I don't know why he did it, and before I can leave it stand undenied I have to suggest, I feel that it poses an ethical problem when an attorney has to become a witness in a case, I have two possible suggestion on it. One, is that we go ahead and continue the case, the taking of the evidence and then at the conclusion of it that I will make my evidence on that and then anything thereafter I will refer the matter to other counsel. The other possibility is that I'm perfectly willing [fol. 265] to withdraw as counsel in the case. Now, since this problem has come up, if that is what we decide should be done and it is going to be necessary for me to get other counsel to represent my clients here, I believe we will probably have to have the record transcript written up to this point anyway so that any counsel coming into the case right now could go ahead with it properly so that my clients will be properly represented in the matter. Those are the only two procedures that occur to me on it, and I think probably some recommendation from you on the matter would be in order.

TRIAL EXAMINER: Do you have a statement to make, Mr. Baker?

MR. BAKER: Let me make this statement. Whether the matter is relevant or not I simply shall not say. I knew nothing about these statements, nothing at all, until yesterday when counsel began to interrogate from them.

After that time during the recess when I found out that apparently there had been some interrogation, I asked some of my witnesses if any of the others had been and this witness told me that he had, and the questions, what was said and what the witness said was the testimony that he gave. Now, rather than to cause any problems of counsel, rather for him to withdraw and bring other counsel in, I have no objection if that testimony is stricken from the record so that we may proceed without it.

TRIAL EXAMINER: You mean physically stricken? [fol. 266] MR. BAKER: Physically removed from the record. Now, that motion is entirely up to the Trial Examiner.

TRIAL EXAMINER: Are you making that in the form of a motion?

MR. BAKER: Yes, I make that in the form of—

MR. GUNNOE: I would object to it being stricken. I feel like it should be left in the record as we may find it necessary to file additional charges in this case.

MR. BAKER: Before you rule, my second suggestion would be that if counsel wants to take the stand it's certainly not unusual in this type of case. He may interrogate himself by question and answer.

TRIAL EXAMINER: Well, my own suggestion would be, Mr. Jenkins, as Mr. Baker has said it's not unusual for an attorney to appear in such cases. I agree with you that it is undesirable but my own suggestion would be that after all the evidence is in with respect to everything else that you take the stand as to this one limited matter.

MR. JENKINS: Very well.

TRIAL EXAMINER: It would be limited to that. It will be understood it will come in only after everything else has been taken care of and everyone has rested, rebuttal, and everything.

MR. BAKER: On my motion to strike, I have made that motion, would you rule on my motion?

[fol. 267] TRIAL EXAMINER: In view of the opposition of the Charging Party, I will deny the motion to strike. But I would say that I would suggest this procedure that after you have rested and after Mr. Baker has indicated he has included any rebuttal he may have, that

you may take the stand and at that point testify only as to this incident you are referring to and that cross-examination be limited to this incident, and then we will close the record.

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ELISHA WATTS

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q Would you state your name and address, please?

A Elisha Watts, 2974 James River Road.

Q Are you presently employed at Gissel Packing Company? A No, sir.

Q Have you ever been employed there? A Yes, sir.

Q When did you begin working at Gissel? A Well,—

Q Approximately how many years had you been there?

A I approximately been eight years, off and on.

[fol. 268] Q Off and on? A Off and on.

Q When did you leave the last time? A It was in April—May the 1st, 1965.

Q While you were an employee of Gissel Packing Company were you approached by a Union representative to sign a Union card? A Yes, sir.

Q Did you sign such a card? A Yes, sir.

Q I'll show you what has been marked as General Counsel Exhibit 10-FF for identification and ask if that's your signature?

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10-FF for identification.)

A It sure is.

Q Did you sign the card on or about the date indicated, which is January 16, 1965? A Right.

Q Do you recall whom you got the card from? A He's in there.

Q Is it the one that's called Red? A Red.

Q Red? A Yes.

[fol. 269] MR. BAKER: I offer General Counsel's Exhibit 10-FF for identification into evidence.

MR. JENKINS: We have the same objections as we did to the others, marked Number 10.

TRIAL EXAMINER: Received.

(Thereupon, the above-mentioned document heretofore marked General Counsel's Exhibit 10-FF for identification was received in evidence.)

Q (By Mr. Baker) Mr. Watts, while you were employed at Gissel did you ever hear any supervisor or boss say anything about a Union?

MR. JENKINS: Objection.

TRIAL EXAMINER: Overruled.

Go ahead.

[THE WITNESS:] Yes, sir.

Q (By Mr. Baker) What supervisor or boss did you hear? A I heard Charles, I heard Pootchie.

TRIAL EXAMINER: Who is this?

THE WITNESS: His name is Herbert.

TRIAL EXAMINER: What is the last name?

MR. BAKER: Gissel and he called him Pootchie. That's like Pork Chop and Mustache.

TRIAL EXAMINER: That's what I was trying to understand.

Q (By Mr. Baker) Directing your attention to the conversation you heard—you say you had heard with [fol. 270] Charles Gissel, do you remember when that took place? A I heard him, it was on Saturday morning, Charles.

Q It was on Saturday morning. Do you remember when? A I don't know the date. As well as I can remember it was on a Saturday morning approximately 7:00 o'clock.

Q Where did this conversation take place? A It was out in the hallway when I was coming in.

Q Do you remember what—Was it before or after you had signed the Union card? A It was after it.

Q How long after would you say? A I'd say approximately a month.

Q What did you hear Mr. Gissel say? To whom was he talking? A He was talking to them boys that works there. There was a whole bunch of them.

Q What did he say? A He said, "The hell with the Union," the exact words he said, "I'm going to leave it and turn it over to them."

Q Leave what? A This plant and give it to them if they want it.

Q Were there other people around? A Yes, sir.

Q Who all was around if you recall? A Don Kidd. [fol. 271] Q Anybody else? A Well, they ain't here. They heard it but they're not here.

Q What are the names? A Mollihan and all of them.

Q What place in the plant did you say this was? A In the hallway to the office there.

Q You say you heard Herb say something, Herb Gissel? A Well, one day I was cutting bacon and he come in, he said, "If you don't—"

MR. JENKINS: Just a second. I think any conversations ought to be identified by date and place so we can—

Q (By Mr. Baker) Where was this conversation? A I was working as a meat cutter. I was trimming bacon. Herb come in there and he said—

MR. JENKINS: Just a minute.

Q (By Mr. Baker) When was this, do you remember? A No, sir, I don't remember exactly.

Q Was it after this conversation you heard with Charles or before? A After that.

Q How long after that would you say? A Oh, I'd say approximately a week, a week and a half.

Q All right. Who else was present at that time you heard Herb say this? A Kenneth Adkins.

[fol. 272] Q What did Herbert say at that time? A He said, "I don't want to hear any more about this Union stuff. If you can't do your work, get out."

Q Is that all he said? A That's right.

Q You don't recall him saying anything else? A Well, there was argument and he said so much stuff, going on like a typewriter.

Q Do you recall him saying anything else at that time about the Union? A He said it several times.

Q What about this time when you and Adkins were there, do you recall anything further? A Yeah, they pinned all kind of stuff on me to run me off.

Q Let me ask you this—

MR. JENKINS: Objection. Motion to strike. No charge—

MR. BAKER: I have no objection, Your Honor.

TRIAL EXAMINER: Very well.

Q (By Mr. Baker) Did Mr. Herbert Gissel indicate to you that he knew you were the head of this Union? A No, sir, I didn't hear him say that.

Q You didn't hear him say it? A No, sir.

* * *

[fol. 273]

CROSS-EXAMINATION

BY MR. JENKINS:

Q Mr. Watts, you testified here about a conversation or statements, really, that Charles Gissel made on Saturday morning, I think you said about 7:00 o'clock, about a month after you signed a Union card. Do you remember your testimony about that? A Yes, sir.

Q Who was the first person that you reported this to? Who did you tell about it? A Well, everybody heard it walking through there.

Q No, I'm asking you who you told it to. Who have you told about overhearing it? A I didn't tell nobody. They all heard it just talking amongst one another.

Q Well, after that day didn't you tell anyone else about having heard it then? A No, sir, it wasn't none of my business.

[fol. 274] Q You never did? A No, sir.

Q You never told anybody about it? A No.

Q You never discussed it with anybody? A No. We were just talking back and forth but you know through the general talk.

Q Uh-huh. Well, did you, for example, call up the Union organizers or tell them about it? A No, sir.

Q Did you tell anybody who was investigating this case for the Labor Board about it? Do you remember telling them anything about it? A Well, I talked to a certain person, I don't recall his name. I think this boy sitting right there but I don't think—

Q You told him about it? A Yes, sir.

Q That's Mr.— A —about one part of it.

Q That's Mr. Gunnoe? A Right.

Q Do you remember when you told him about it? A Well, it was along in February sometime.

Q Did you give him any statement or anything like [fol. 275] that in writing? A No, sir, as I recall, all I give the statement is to what I heard and what I said.

Q I'm speaking about who you gave it to, not what you put down, but did you give a statement to Mr. Gunnoe about— A I gave a statement to one of them Labor Boards sent up there from the Government, yes, sir.

Q From the Government? A Yes, sir.

Q And anybody else other than the Government man? A No, sir.

Q Now, you left the employment of the Company May the 1st, I believe, is that correct? A Somewhere along the last day of April, the first day of May.

Q Had you been in and out of the Company as an employee a number of times before that? A Well, sure, I've been there seven, eight times.

Q You've been employed— A Fired, hired, fired, hired, fired.

Q Several times? A How many times I couldn't count them.

Q Do you recall attending a Union meeting about the middle of April down at one of the hotels here in Huntington? A Well, I don't want to say anything to incriminate myself.

[fol. 276] MR. BAKER: If you attended a Union meeting, go ahead and testify to it.

[THE WITNESS:] Yes, I did.

Q (By Mr. Jenkins) Well, who presided at this meeting? A I don't know the name. There was a slew of them.

Q Do you know who was there in charge? A Nope, I don't.

MR. BAKER: I think he's exceeding the scope of direct examination, hasn't he? I don't know what relevance this has.

TRIAL EXAMINER: That is true.

Q (By Mr. Jenkins) Do you remember any discussion there of how things were going down at the Gissel Plant? A That's more than several months, that's been so far, I don't remember any of that, I didn't write it down.

Q You testified about conversations that you overheard even longer— A I kept it in my own head because I heard it and I wrote it on black on white.

Q You did? A Yeah, blue ink, and signed it.

Q When? A It was somewhere in February.

Q And that was the only reason you remember because you wrote it down? A Well, I was wanting to hang on to it because that's what's happened.

[fol. 277] Q Well, what about conversations that happened at this Union meeting in April, do you remember those? A They told us about Sehon Stevenson and they told us about this and they told us about how you been treating us which every bit of it was true.

Q What did they tell you? A Well, just—I can't think of all the things they got up and said.

Q You said it was all true. What was it? A Anything they said would be true to me.

Q It may be to you what was said? A Well, just a few words, conversation, kept going through that and hashed it out, and went on home.

Q What was it, what was said and who said what? A Well, they just said how the Company was going to have to organize when they come—and I'm not going to say too much about it because it didn't interest me.

Q Doesn't interest you? A No. All that interests me is what they done against me and against the Union. I'm a Union man myself.

Q Well, what was said at the meeting? A Well, they just—conversation back and forwards.

Q Well, what was the meaning of that, what were the words? A Just to point out a few things to us.

[fol. 278] Q What did they point out? A That we were getting along good, just keep it up.

Q What did they mean by that? A Well, I don't know. You're a lawyer.

MR. BAKER: I don't think there's any relevance to this, Your Honor.

Q (By Mr. Jenkins) Well, what I want to know is, what was said, the specific words or the substance, the meaning of the conversation that was told to you at the meeting in April.

* * *

[fol. 280] A All I remember, we all, I think there was approximately, oh, everyone down there but three, I can name them off, was up there. He told us, he said that, Logan, he talked about Logan Packing Company which is right here, about Sehon Stevenson, and he talked a little about Gissel up there, and I don't know the rest of it. I can't think that far back.

Q (By Mr. Jenkins) What did he say about Gissel? A He said, "They're unfair."

Q What else did he say? A We should make more money.

Q Yes. A That's about all I can understand of it.

Q You don't remember anything else? A That's as far as I'm going with it.

Q It's not clear to me. Are you saying that you know something more but you're not going to say it? A I don't know nothing else more.

Q This is everything you remember? A That's right. I'll just say everything and let it go.

Q How long was the meeting? How long did it last, [fol. 281] approximately? A I'd probably say an hour and a half. I went to sleep.

* * *

KENNETH ADKINS

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

[fol. 282] BY MR. BAKER:

Q. Would you state your name and address, please, for the record? A. Kenneth Adkins, 1268 - 28th Street.

Q. Are you presently employed at Gissel Packing Company? A. Yes.

Q. When did you begin working there? A. About two years ago.

Q. What department do you work in? A. No?

Q. Yes. A. Boning room.

Q. Who is your supervisor or boss? A. Pootchie will be back there.

Q. Pootchie? A. Yes.

Q. Do you know his first name? Is that Pootchie, his first name, or is that a nickname? A. I don't know. That's what we call him. I don't know whether that's his real name or not.

Q. Would you state whether or not you signed a card, an application for the Union? A. Yes, sir.

Q. Where did you get the application? A. Some Union man come around and asked if I wanted to sign.

[fol. 283] Q. Where did he come to? A. My home.

Q. I show you what has been marked General Counsel's Exhibit 10-EE for identification and ask you if that's your signature?

(Thereupon, the above-mentioned document was marked General Counsel's Exhibit 10-EE for identification.)

A. Yes, it is.

Q. Did you sign the card on or about the date indicated, February 19, 1965? A. Yes.

MR. BAKER: I offer General Counsel Exhibit 10-EE into evidence.

MR. JENKINS: Same objections as to all of General Counsel's Exhibit 10.

TRIAL EXAMINER: It will be received.

(Thereupon, the document heretofore marked General Counsel's Exhibit 10-EE for identification was received in evidence.)

Q (By Mr. Baker) Mr. Adkins, while working at Gissel, will you state whether or not you overheard any supervisor or boss make any statement about the Union?

A Yes, sir.

Q Did you hear more than one supervisor make such a statement? A Yes, sir.

[fol. 284] Q What were their names? A Charles Gissel and Herbert Gissel.

Q All right. Directing your attention to the statements or conversations with Charles Gissel, will you state when that happened and where? A The first one? When the first one—

Q The first one, yes. A —the first one said something about the Union?

Q Yes. A The first time I heard him say was around January the 27th, it was in the shipping room, working, just me.

Q Who else was there? A Simon.

Q Who's Simon. A He's a boss.

Q You heard Mr. Charles Gissel talking to Simon, is that right? A Well, he wasn't talking to me. He was just talking.

Q What did he say? A He said it would be cheaper just to have the meat shipped in, cut up and all, and get rid of most of the men in the back, he said, between the kill room and the bone room.

Q Did he mention the Union at this time? Did you hear him say anything about the Union? A He didn't say anything about the Union.

[fol. 285] Q Did you hear him have any other conversation with Charles that you recall where the Union was mentioned? A One time out in front at the loading dock, just me and Simon and Charles was out there.

Q When was this? Was this after this time you heard him say it would be cheaper to have the meat shipped in? A This was before then.

Q Before then. What did he say then?

MR. JENKINS: Objection. I think he's required to fix a time.

Q (By Mr. Baker) How long before would you say?

A It was around, this happened around February 23d, something like that.

Q You say this other one was January the 27th, so it was after? A Afterwards.

Q This all was in 1965? A (Nods.)

Q What did he say at this time? A He said, he got mad and said he'd just take his money and leave. If the Union got in, he'd just take his money and let the Union run the place the way they wanted to.

Q Now, did you hear him say anything else? A That's all.

Q What about Herbert, you say you had a conversation with Herbert, when did that happen? A I didn't have a conversation. I just heard something.

Q When did you hear this? A It was about the first week in February, I think.

Q 1965? A Yes.

Q Where were you at that time? A This was in the boning room.

Q Anybody else present at that time? A Yeah, all the employees.

Q What did Herbert Gissel say? A He was talking to Elisha Watts and he was bawling him out or something. He said—

MR. JENKINS: Just one second, please. What paragraph of the complaint does this refer to?

MR. BAKER: I think 5(b).

MR. JENKINS: Excuse me. Go ahead.

[THE WITNESS:] (Continued.) Herbert was bawling out Elisha. Elisha wasn't trimming the bacon or something right, or something. He said he was going to trim it his way, and the Union wasn't going to get in. He'd have to fight the Union first, said it wasn't going to get in.

Q (By Mr. Baker) Say that again. Say each time what it was that Herb said. A He said the Union wasn't going to get in, that it would have to fight him first. [fol. 287] Q It would have to fight him first? A The Union.

Q All right. Is that all you can recall he said? A Yes.

CROSS-EXAMINATION

BY MR. JENKINS:

Q Mr. Adkins, you say you heard a conversation between Charles Gissel and Mr. Simon in the shipping room on January the 27th? A Yes, sir.

TRIAL EXAMINER: Just a minute. I am not clear who Mr. Simon is.

MR. JENKINS: That's my next question.

TRIAL EXAMINER: All right.

[fol. 288] Q (By Mr. Jenkins) Who is Mr. Simon? A Just a boss there as far as I know.

TRIAL EXAMINER: Is Simon his first name or his last?

THE WITNESS: I don't know. Just a nickname, I imagine.

MR. JENKINS: Motion to strike his testimony with respect to conversation between Charles Gissel and Simon.

TRIAL EXAMINER: Overruled.

MR. JENKINS: The ground of the motion I think so the record will show, this is not relevant, two supervisors talking to each other.

TRIAL EXAMINER: Ruling stands.

MR. JENKINS: Pardon?

TRIAL EXAMINER: My ruling stands.

MR. JENKINS: Of course.

Q (By Mr. Jenkins) You mentioned a conversation, Mr. Adkins, in February on the loading dock when Charles Gissel was there, didn't you? Do you remember that? A Yes, sir.

Q Who else was there when that conversation took place? A On the loading dock?

Q Yes. A Just me and Simon and Charles.

Q Was Charles talking to Simon again? A Not particular.

Q The three of you were there, correct? A Yes.

[fol. 289] Q What did you say on that occasion? A I didn't say nothing.

Q Naturally you weren't involved in it? A No.

MR. JENKINS: Same motion now with respect to this colloquy, dock conversation, same grounds.

TRIAL EXAMINER: Denied.

Q (By Mr. Jenkins) Mr. Adkins, after this conversation in January in the shipping room that you testified about here, who did you first report this to or tell about the conversation? A I didn't report it to nobody.

Q Well, eventually, sometime from then up until now, you must have told somebody about it, didn't you? A Yeah, I guess so.

Q Who? A One of the Union men.

Q Do you remember what his name was? A No, no.

Q Do you remember about when you talked to him? A No.

Q Do you know what he looks like? A No, I don't remember.

Q Do you remember what was said at the time of that conversation between you and the Union man? A Yes.

[fol. 290] Q What? What did you say? A He asked me if I heard anything mentioned about the Union, and I just told him.

Q And you don't remember when this was? A No.

Q No idea? A No.

Q Have you talked to anyone else about it other than this one time? A No.

Q No one at anytime? A No.

Q When you talked to the Union man about it, were just the two of you alone? A No.

Q Who else was there? A My wife.

Q And who else? A That was all.

Q And you're sure this man was a Union organizer? A Yes, he showed me his identification.

Q As a Union organizer? A Yes.

Q Did it say Food Store Employees Union, AFL-CIO, do you remember? A I don't remember.

[fol. 291] Q Are you sure from looking at it that he was with the Food Store Employees, Butcher Workmen Union? A Yes.

Q Do you know Jerald Scheinberg? A I think he's one of the Union men. I'm not sure.

Q Did he tell you he was a Union man? A I don't know whether I ever talked to him or not.

Q You don't know him, do you? A No, not particularly.

Q Do you ever remember giving a statement then or signing anything at the request of a man named Jerald Scheinberg? A I don't remember. I might have.

Q Well, here's an affidavit here, Mr. Adkins, it's got the name of Kenneth Adkins signed on it. This is the affidavit which the lawyer from the Government has just given me. Is that your signature? A Yes, it is.

Q And it's dated February 23d, 1965, 23d day of February, 1965, Jerald Scheinberg. Do you remember signing that? A Yeah, I remember. That's my signature.

Q Do you remember signing it? A Yes, I do.

Q Whereabouts were you when you signed it? A I don't remember.

[fol. 292] Q What did you tell Mr. Scheinberg? A I told him what was wrote down there.

Q Do you know what is written down there? A Yes.

Q You read it? A Yes.

Q When did you read it last? A I don't know if I read that certain copy. I have one.

Q You have one yourself? A Yes.

Q When did you last read it? A A couple of weeks ago.

Q You haven't read it since? A No.

Q No one showed you one of these statements since that time? A No.

Q No one has asked you about it? A No.

Q Haven't talked to a soul about it?

Is that your statement that you have not talked to anybody about it? A Yes, I talked to somebody about it.

Q Who? A One of the Union men.

[fol. 293] Q Who? A I don't remember which one.

Q This is just something that happened within the last week or so and you don't remember?

Your answer is no? A No

Q Have you talked to Mr. Baker over there about it? A Yes.

TRIAL EXAMINER: When you say "it," what are you talking about?

MR. JENKINS: Talking about the statement.

TRIAL EXAMINER: Not about things generally; just the statment?

TRIAL EXAMINER: Yes, ma'am.

Q (By Mr. Jenkins) When did you talk to Mr. Baker about it? A I didn't talk to him about the statement what I wrote in it exactly. I talked to him the other day about it, how it would be.

Q When was this? A Monday, the other day.

Q All you talked to him about was just the date of the trial? A Yeah.

Q Nothing else? A Well, a few other things but nothing about it.

[fol. 294] Q Nothing about a statement? A Not what I have to say or anything.

Q Nothing about what you were going to testify about? A No.

Q You never discussed that with Mr. Baker? A No.

Q He never asked you what you were going to say in this hearing, did he? A He didn't tell me what to say. He just said he might ask me.

Q Did he ask you what you were going to say? A No, he never.

MR. JENKINS: That's all.

[fol. 400]

Common Pleas Court Room,
Cabell County Court House,
Huntington, West Virginia.

Wednesday, August 4, 1965.

[fol. 402]

RUSH D. MOORE

a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JENKINS:

Q Where do you work? A Gissel Packing.

Q How long have you worked there? Approximately?

A Off and on about three years.

Q What is the general nature of your work? What

kind of job do you do? A I do a little bit of everything out there.

Q Mr. Moore, have you been employed down there during 1965, this year? A Yes, sir.

Q Back in March, 1965, there has been testimony in this case to the effect that a conversation took place between you and Charles Gissel. Do you know who Charles Gissel is, do you not? A Yes, sir.

Q At which conversation, this was out in front I think of the office or someplace described as out in front, Charles Gissel, according to a witness who previously testified in [fol. 403] this case, is supposed to have asked you to find out all you could about the Union and to report back to Mr. Gissel what you found out. Now, I ask you did any such conversation as this take place between you and Charles Gissel? A No, sir, it did not.

Q Now, there had been further testimony in this case that on or about February the 20th, back at the garage, there was a conversation between you and Charles Gissel that Gissel asked you if you knew anything about the Union, that he also asked you if you knew anything about Don Kidd. He wanted to know if Don Kidd was the leader of the Union and Charles Gissel, according to this witness, that if Kidd was the leader of the Union he would be fired. Now, did any such conversation as this take place in your presence? A No, sir.

Q Now, you said you did a number of things down there. Do you do maintenance work among other things? A Yes, sir, I do.

Q Beginning in January of 1965 will you state whether or not there began a series of unusual incidents occurring down there at the plant with respect to trucks, people's property, and other matters? A Yes, sir, I would.

MR. BAKER: I object to the leading nature of the question.

TRIAL EXAMINER: Ask him if there were any incidents.

[fol. 404] MR. JENKINS: Yes, that was my next question.

Q (By Mr. Jenkins) Would you tell us what incidents, exactly what incidents began to occur in January?

A Yeah, I could say a few things but I wouldn't want to say them in front of ladies.

TRIAL EXAMINER: Go ahead.

MR. BAKER: I object on the basis of the materiality. What difference does it make if there were incidents?

TRIAL EXAMINER: I want to know who did them and in what connection.

[THE WITNESS:] (Continued.) Well, there was a coat down there that somebody stole off, and Bill is a boss back in the boning room, and soiled up in it, if you know what I mean if you get the picture.

MR. JENKINS: The materiality of this line of questioning, what we intend to develop, Your Honor, is part of a calculated plan. This Union started stirring up troubles down there beginning in January to provoke the management and we intend to bring out a series of incidents that all occurred immediately following the time the Union made its demand for recognition and was refused in this case.

[fol. 406] MR. JENKINS: Correct. Correct. We refused to bargain. Our position on that, so there is not mistake, is because our people did not believe they represented a majority and the unit was not appropriate. Now, that is the reason that there was a refusal to bargain and we think the record should show this course of conduct and this is a calculated plan to try to make the Bernel Foam doctrine apply here so this Union won't have to stand an election and this is a typical thing, demand for recognition, a refusal if the management doesn't think they have a majority, and then stirring up the campaign of trouble so they can bring in the other 8(a) charges and apply the Bernel Foam so they can get recognized without an election. This is our position in the case.

[fol. 408] Q (By Mr. Jenkins) This event that you described, Mr. Moore, with the coat did this occur back at the beginning of the year? A It occurred right around

the time that the Union, you know, they were talking about the Union and stuff like that.

Q Had an incident like this ever occurred before to your knowledge? A No, not that I know of.

[fol. 409] Q Now, you mentioned there were other unusual incidents. What other incidents do you remember with respect to equipment of the Company, trucks—

MR. BAKER: I suggest counsel is leading now.

TRIAL EXAMINER: Ask him what events he remembers and then you can refresh his recollection.

Q (By Mr. Jenkins) Do you have any recollection about other events? A Well, I don't know the dates or the month that it happened but I know that down there we had some truck motors to blow up, about five or six of them I imagine, and we sent some motor oil off to have it, you know, analyzed and—but that was as far as I ever heard about that.

Q And do you know what was in the oil? A Well, I don't know myself. I mean just using my own judgment it felt like sand.

MR. BAKER: I object—

MR. JENKINS: He can use his own judgment.

MR. BAKER: —unless he is established as an expert. Is he a chemist?

MR. JENKINS: He can certainly use his own judgment about it. He's a maintenance man.

TRIAL EXAMINER: He can state his judgment. It depends on what weight I shall give it.

[fol. 410] Q (By Mr. Jenkins) Go ahead, Mr. Moore.

TRIAL EXAMINER: If they had an analysis I assume that if it showed sand, I'll get to that eventually. I'll see the analysis.

Q (By Mr. Jenkins) Go ahead, Mr. Moore. A Anyway, that's what we found in all the motor oil. It felt like sand to me; and another incident came up about it, you know, where it first started about the Union down there, somebody had cut it out of the paper, you know, and hung it on the door.

TRIAL EXAMINER: Did what?

THE WITNESS: You know where they started about the Union, you know they put it in the paper, something, you know somebody did. Well, anyway, whatever it was

in the paper, they cut it out and hung it on the boning room door.

[THE WITNESS:] (Continued) And just small items like that, you know, is all I know.

Q (By Mr. Jenkins) Now, the time that you had the difficulties with the motor blowing up in the trucks when was that in relation to when this Union business started in January? A Well, sir, I couldn't call the dates because I never paid no attention to that.

Q Had you ever had any trouble down there with sand in the motors before? A No, sir.

[fol. 412]

CROSS-EXAMINATION

BY MR. BAKER:

Q How did you know the Union was trying to get in, Mr. Moore? A Well, there was talk going on around the factory about it.

[fol. 413] Q Who was doing the talking? A I don't know. I'd be off in a distance, I'd be hearing them talk about it.

Q You don't know who it was? A No, sir.

Q You never did hear any of the Gissels say anything about the Union, I take it? A No, sir.

Q You never heard them say a word? A No, sir.

Q You never heard them mention the Union? A Not until just about the last week they mentioned about it and, of course, I knowed, you know, that all the guys, you know the biggest majority of them was for it. I didn't know their names or anything like that.

Q You did know they were all for it? A No, sir, I said you know the biggest majority of the guys that was for it. That's the way I felt, you know, that they were for it.

Q Did anybody ever ask you to sign a card? A No, sir.

Q Did anybody ever talk to you directly about the Union? A No, sir.

Q Yet you knew that the biggest majority were for it? A Yeah, I mean, you know, you get around, you talk to

[fol. 414] the guys and you hear them or something like that. You know, you know they're for it by the way they talk.

Q I thought you said no one talked to you directly but just in the distance. A I mean it's the way they talk.

Q There wasn't any doubt in your mind that most of the people there wanted a Union, isn't that right? A No, I wouldn't say that.

Q I thought you did say it. I thought you said that the biggest majority wanted it. Now, did they or didn't they?

MR. JENKINS: He said the biggest majority of the ones he heard talking.

TRIAL EXAMINER: I understood him to say that the biggest majority of the employees, this was his impression, wanted a Union.

THE WITNESS: Yes, ma'am, that's the way I said it but, you know, by the people that—see, I gas up trucks in the morning time, you know, I hear, you know, as they walk by or something like that.

Q - (By Mr. Baker) Besides gassing up the trucks, I believe you do a little bit of everything, don't you? A Yes, sir.

Q You're sort of jack of all trades? A Yes.

[fol. 415] Q You work around th whole plant? A Yes, sir.

Q Not only in the garage? A Yes, sir.

Q So you have an opportunity to hear not only just the drivers but people working in the slaughter house and shipping room, you're in all of these places, aren't you? A Yes, sir.

Q You heard all of these people talking, I mean people in all the departments, you weren't just limited to the garage, isn't that right? A I'm not limited to the garage, that's right.

Q So when you say that the biggest majority wanted the Union, you're talking about all the people down there because you were working with all of them, isn't that correct? A Well, let's put it like this here now—

Q Just answer my question.

MR. JENKINS: You let him answer it and answer in his own words. Don't you interrupt.

TRIAL EXAMINER: Let him answer it.

MR. BAKER: I'm just asking for an answer to my question.

[THE WITNESS:] Whenever I walk around the plant if anybody is talking they all shut up and walk off away from me.

Q (By Mr. Baker) They do? A Yes, sir.

[fol. 416] Q Why would they do that? A Well, you use our own judgment on that. I don't know.

Q Are you a boss? A No, sir.

Q But they wouldn't talk so you could hear them? A No, sir.

Q So when you said that what you heard you really didn't hear them, is that right? A Sir?

Q Are you now saying that you did not hear this stuff that you said you heard in the beginning of your testimony? A Oh, no.

Q You did hear it? A Yes, sir.

Q You heard enough to know the biggest majority wanted a Union, is that right, now? A Yes, sir. My brother joined the Union.

Q I see. But if anybody was talking and you walked up, they would quit talking and walk away? A Yes, sir.

Q Were you for or against the Union?

MR. JENKINS: Objection. Not proper.

[THE WITNESS:] Well, I—

MR. JENKINS: Just a minute.

TRIAL EXAMINER: He may answer. Overruled. He may answer.

Q (By Mr. Baker) Were you for or against the Union yourself? A Well, I'm against it my own self, sir.

Q Against them? A Yes, sir.

Q Why are you against them? A Because I just don't believe in it, that's why.

MR. JENKINS: Motion to strike. Irrelevant.

TRIAL EXAMINER: No.

Q (By Mr. Baker) Did you ever discuss the fact you do believe or you don't believe in Unions would you say with Mr. Herbert Gissel? A I don't understand it.

MR. JENKINS: When is it proper in an unfair practice hearing to ask an employee his opinion and his personal beliefs?

TRIAL EXAMINER: Because it may have in the case of General Counsel, the fact that a witness favors a Union is an element to be taken into consideration in determining his credibility.

MR. JENKINS: Do I understand from that then it's your ruling that it's proper to make an inquiry here of each of these witnesses as to their attitudes toward a Union, pro or con, or their philosophy about the Union movement?

TRIAL EXAMINER: Well, the questions weren't asked. Certainly the witnesses, as it turned out, if a witness testified, testified that he had signed a card so it was [fol. 418] perfectly obvious from the beginning that he favored the Union at some stage.

MR. JENKINS: I certainly object to that conclusion that everybody who signs a card proves that they're in favor of the Union movement. They may have another reason for it.

[fol. 421] **MR. JENKINS:** The Respondent moves that the Hearing Officer disqualify herself and that the hearing be terminated until another Hearing Officer is appointed or in the alternative that the hearing recess while the Respondent takes an interim appeal. The basis for the Respondent's motion is the comments on the law and the evidence which the Hearing Officer has made at this hearing today.

[fol. 424] **MR. JENKINS:** I was going to ask something else. Your Honor, not that we're back on the record so that I will understand the specific part of your ruling my motion, of course, was two-pronged. The first motion, of course, was for disqualification and the appointment or assignment of another Trial Examiner. In the alternative I asked for time for an interim appeal.

TRIAL EXAMINER: The first motion is denied.

MR. JENKINS: I want to be sure.

TRIAL EXAMINER: The second motion is granted.

MR. JENKINS: Correct, fine.

It just occurred to me while we had an off-the-record discussion that there was an additional ground that formed the basis of my client's decision to make this motion which perhaps the record, in fairness to Your Honor, and counsel for the Union and the Government, should state and that is the comments made with respect to admitting evidence of the witness as to his opinion or his [fol. 425] feeling for or against the Union. We felt that your comments on that and your ruling on that was highly prejudicial to us.

TRIAL EXAMINER: You say I should not take into consideration—

MR. JENKINS: Yes, ma'am.

TRIAL EXAMINER: —the fact that an employee favors the Union in evaluating his testimony?

MR. JENKINS: Yes, ma'am.

TRIAL EXAMINER: It is not a factor to be considered either way?

MR. JENKINS: It is my opinion that it is not proper to ask a witness in a proceeding such as this, either a witness for the Government or the Union or for the Respondent, whether he is for or against the Union, and I feel your ruling and comments on that were prejudicial and I just simply state so I would be completely candid and complete with Your Honor.

TRIAL EXAMINER: Certainly. I want to ask you then this: If it is your position that in evaluating testimony of the witnesses called by the General Counsel and/or the Union that I would not—that it would not be proper for me to consider in evaluating their testimony that they might be pro-Union and have an interest in seeing that the Union won?

MR. JENKINS: I think it is not proper for them to be specifically asked what their philosophy is for or against [fol. 426] the Union which was the question involved with this witness without regard to any time of his opinion and his state of mind. I just feel that that was highly improper.

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[fol. 434]

City Council Chambers, City Office
Building and Judge Daugherty's
Chambers, County Court House
Huntington, West Virginia,

Tuesday, August 17, 1965.

[fol. 436] TRIAL EXAMINER ROSANNA A. BLAKE:

On the record.

Before I forget it, there is a statement I would like to make.

The first day of hearing. Mr. Jenkins made a motion with respect to certain allegations of the Complaint on the grounds that the events had occurred more than six months prior to the date of the filing of the Charge.

I assume they had occurred more than six months prior to the filing of the Charge, and I indicated that no unfair labor practice findings would be based on any events which occurred more than six months prior to the filing of the Charge; but, that under the Bryan Rule, such things could be considered for background.

Subsequently, in checking, it appears to me that the six months goes back to August and, before issuing my opinion, I will check and double-check.

If this is so, and I did point this out, I believe, off the record at the start of the second day of hearing, and at that time I understood Mr. Jenkins to say that he or to point out that there was a variance between the Charge and the Complaint.

This is an argument which he certainly is entitled to make. But, in case there has been any misunderstanding [fol. 437] with respect to the ruling on the first day, with respect to the 10(b) period, I want it clearly understood that the ruling was made on the supposition that the events in the complaint in fact occurred more than six months prior to the filing of the charge. If they did not occur prior, more than six months prior to the filing of the charge, they will be considered as any other allegation in the Complaint, which is timely.

This, I think, should be made clear lest there be some misunderstanding about the ruling on the first day; that

is, the events in the Complaint which occurred within the six month period will be considered in the light of the testimony in the usual manner.

At the close of the previous day's hearing, Mr. Jenkins was allowed a recess to enable him to file a motion with the Trial Examiner or an affidavit of disqualification.

A document was filed, it was mailed on August 9, 1965 with a covering letter which I would like to ask [be] marked for identification as Trial Examiner's Exhibit 1 (A).

(The document above referred to was marked Trial Examiner's Exhibit No. 1(a) for identification.)

TRIAL EXAMINER: The attached document will be marked as Trial Examiner's Exhibit 1(b).

(The document above referred to was marked Trial Examiner's Exhibit No. 1(b) for identification.)

[fol. 438] TRIAL EXAMINER: The document filed by Mr. Jenkins has been considered and by telegram sent at 1:40 o'clock p.m. on August 8, 1965, the Trial Examiner denied the motion. It was sent by telegram to John E. Jenkins, Esquire, to P. O. Box 1457, Huntington, West Virginia, with information copies to Mr. Jack V. Baker, Esquire and Mr. Woodrow R. Gunnoe.

A copy of the telegram will be marked for identification as Trial Examiner's Exhibit 2.

(The document above referred to was marked Trial Examiner's Exhibit No. 2 for identification.)

TRIAL EXAMINER: I had understood that Mr. Jenkins was considering filing an interim appeal with the Board in case his motion was denied.

When I left Washington yesterday, no interim appeal had been filed as far as the Board's records show.

Was an interim appeal filed, Mr. Jenkins?

MR. JENKINS: There was not.

TRIAL EXAMINER: Thank you.

The Trial Examiner's Exhibits 1(a), 1(b), and 2 are received in evidence and made a part of the record.

(Whereupon, the documents previously marked as Trial Examiner's Exhibits Nos. 1(a), 1(b) and 2 for identification, were received in evidence.)

[fol. 439] TRIAL EXAMINER: Are there any further preliminaries before we continue with the witness?

MR. JENKINS: Just a moment, please.

(Examining documents.)

Your Honor, is the telegram which you sent me on August 11 designated as Trial Examiner's Exhibit 2.

TRIAL EXAMINER: Yes, it is.

MR. JENKINS: The only comment I have with respect to the information contained in Trial Examiner's Exhibit 2 is that this telegram makes reference to Counsel's failure to file the motion on the date set therefor.

This is incorrect.

The motion in this matter was made in the record as will be shown by a transcript of the proceedings held on August 6, 1965, and Counsel for the Respondent never agreed to file any motion. The Counsel for the Respondent submitted an affidavit in support of the motion but the document which was forwarded on or about August 9 was not a motion as observed in Trial Examiner's Exhibit No. 2; it was not intended to be a motion, but it was an affidavit in support of a motion which had previously been made at the hearing which the transcript of the evidence will clearly reflect. The transcript will reflect that that motion was made.

TRIAL EXAMINER: Your affidavit was, according to the record, was to have been filed on Monday, August 9, 1965.

[fol. 440] MR. JENKINS: That is correct, but that was contingent upon the fact that I was to get the transcript from the reporter in the mail and I went to the Post Office that morning and checked the mail and I also waited at my residence until noon because it was supposed to have been delivered at my residence by special delivery, air mail, but this was not done. The reporter had not followed through with the instructions.

TRIAL EXAMINER: At Page 432 of the transcript, I say at the bottom of the page:

"—if you find you do not get it"—meaning the transcript—"then if you will submit a telegram I will extend the time—"

And Mr. Jenkins, your answer:

"Fair enough."

MR. JENKINS: We did not send any telegram on that day but we sent the motion itself on Monday which was the first business day after receiving this record late on Saturday afternoon and I do not think it is reasonable to expect us to prepare documents or handle business in the late afternoon on Saturday.

TRIAL EXAMINER: The record will show that I had suggested sending it by telegram at the time if you were unable to get the affidavit in the mail and that you had indicated "Fair enough" on the record.

[fol. 441] As the telegram indicates, I have in fact ruled on the motion as if it had been timely received.

Are you ready to call Mr. Moore?

MR. JENKINS: Yes.

Whereupon,

RUSH D. MOORE

having been previously called as a witness by and on behalf of the Respondent and, having been previously duly sworn, resumed the witness stand and testified further as follows:

[fol. 443]

FURTHER CROSS-EXAMINATION

BY MR. BAKER:

TRIAL EXAMINER: Counsel, you were rubbing your fingers together and the record will not show the motion.

THE WITNESS: Yes, I felt of the oil.

Q (By Mr. Baker) You rubbed your fingers in the oil?

A Yes.

[fol. 446] Q Do you know whether any Union adherent, that is, anyone in favor of the Union had anything to do with the sand in the motors, if there was, in fact, sand in there? A No, sir, I don't know.

Q Where did the company get the motoroil for these trucks? A From Pure Oil, I think it was.

Q Now, or at that time? A At that time, we got it from Pure Oil.

Q Where are you getting it from now? A From Keystone, I think.

Q When did you change from Pure to Keystone? A I don't know the exact date.

Q It was right after these engines blew up, was it not? A Yes, sir.

Q As a matter of fact, the oil you were getting from Pure was not new oil was it? A Yes, it was new oil, yes, sir.

Q It was reused oil, was it not, bulk oil in a barrel which had been used one time? A I don't know about that.

I know it come in drums, that is all I know about it.

Q Did it have Pure Oil on the drums, written on the [fol. 447] drums or were they just plain drums? A They were just blue and white drums is all I know.

Q You do not remember now that it was used oil? A The only thing I can say is that they bought the oil from Pure Oil, that is all I can say. I don't know if it is used oil or not, I mean, as far as that is concerned.

Q After these engines blew up, you changed your supplier of oil, is that not true? A We changed over to Keystone.

Q What was wrong with Pure Oil? A You would have to ask Mr. Gissel or somebody like that, I don't know.

Q Did you go back and feel of any of the oil that was in the drums to see if it had "sand" in it? A Not that I know of.

Q Do you know if the mechanic did? A No, sir, I don't.

Q Do you know if anyone tested that oil that was left in the Pure Oil drums? A The only thing I can say is, like I said before, that we took the oil that we found in the

trucks, took it to Keystone to have it sent off and we took a sample of the other oil that was in the other drums from Pure Oil and sent it too.

That is all I can say.

[fol. 448] Q You do not know what the result is? A No, sir, I don't.

Q But you do know that, after this was done, you started buying your oil from Keystone and quit buying it from Pure? A Yes, sir.

Q I believe I asked you, the last question I asked you the other day to which there was no answer, I asked you if you had ever discussed with either of the Mr. Gissels the fact that you were for or against the Union? A No, sir.

MR. JENKINS: Objection, motion to strike.

TRIAL EXAMINER: Overruled, motion denied.

The answer may stand.

Q (By Mr. Baker) You say you had not? A No, sir.

Q You have had no discussion with them, the Gissels at all, relative to the Union? A No.

Q You haven't had any discussion to date with them regarding the Union, is that correct?

MR. JENKINS: Motion to strike, it is irrelevant and not material to any issues charged in the Complaint in this case.

TRIAL EXAMINER: Overruled.

THE WITNESS: What was the question?

[fol. 449] Q (By Mr. Baker) You have not had any discussion with them at all as of today with regard to the Union? A All I know, I am sitting here in Court today, that is all I know.

Q But you have not discussed what you knew about the Union or anything in connection with the Union before today or before—

MR. JENKINS: I object.

TRIAL EXAMINER: Let him finish his question.

Q (By Mr. Baker) I was simply saying that you have had no discussions or discussion with the Gissels at all as far as the Union is concerned before today, or before you took the witness chair two weeks ago? A No, sir.

MR. JENKINS: Objection, motion to strike; it is highly improper.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) As far as you knew, the Gissels had no idea how you felt about the Union, is that right?

MR. JENKINS: Objection, motion to strike, irrelevant to any charge in the Complaint.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) Is that true as far as you are concerned, the Gissels had no idea, prior to your taking the witness stand two weeks ago, how you felt about the Union; is that right?

[fol. 450] **MR. JENKINS:** Objection and motion to strike, the fact that he had no idea calls for an opinion, it is an opinion question which is not relevant to any issues properly before this hearing.

TRIAL EXAMINER: The reporter will read the question.

(The reporter read the pending question.)

TRIAL EXAMINER: State your question in terms of fact, Mr. Baker.

Q (By Mr. Baker) As far as you know, the Gissels had no idea how you felt about the Union prior to your having taken the witness stand two weeks ago?

MR. JENKINS: Objection.

TRIAL EXAMINER: Sustained.

MR. JENKINS: It is highly improper—

TRIAL EXAMINER: You can ask him if he knows of any events.

Q (By Mr. Baker) Do you know—

MR. BAKER: Well, Your Honor, I think the witness can testify if he knows whether or not either of the Gissels knew how he felt about the Union.

MR. JENKINS: I object to the statement of Counsel—

TRIAL EXAMINER: You may ask if he had made any statements—

MR. JENKINS: I object to the line of questioning and—

[fol. 451] **TRIAL EXAMINER:** Has the witness made any statements to the Gissels—

MR. JENKINS: What this witness knew that somebody else knew is grossly improper as a basis from which to evidence an opinion.

TRIAL EXAMINER: You have a standing objection to the line of questioning, Mr. Jenkins.

MR. JENKINS: If Your Honor please, in view of the proceedings here, we are going to have to make a technical record in this case and if Your Honor does not mind, I am going to object to the questions since there is a variation in the grounds.

TRIAL EXAMINER: Very well.

State your question in terms of knowledge, Mr. Baker.

Were you aware of any facts—

MR. JENKINS: We object to the Trial Examiner instructing the Government Counsel as to how to ask his question and phrasing it for him.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) Have the Gissels ever said anything to you indicating that they knew that you were either for or against the Union?

MR. JENKINS: Objection, that calls for a conclusion and an interpretation of the remarks. The word, "Gissels" covers about fifteen or so people and it is not proper material going to any allegation in the Complaint in this case.

[fol. 452] **TRIAL EXAMINER:** Overruled.

Q (By Mr. Baker) You may answer. **A** What was the question again?

Q All I am really wanting to know, Mr. Moore is whether or not you told the Gissels, any of the Gissels, Mr. Charles or Mr. Herbert Gissel, that you were against the Union or that you were for the Union?

MR. JENKINS: Objection, it is not proper whether he made the statement that he was for the Union or against the Union, it just is not proper; it is immaterial to any issue in this case.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) You may answer. **A** Well, I never said anything to the Gissels or the Gissels never said anything to me, if that is what you are wanting to know.

Q Now, getting back to my question.

MR. JENKINS: Motion to strike.

TRIAL EXAMINER: Overruled.

Q (By Mr. Baker) As far as you know, as far as your knowledge is concerned, the Gissels did not know, prior to your taking the witness stand two weeks ago, how you felt about the Union?

[fol. 453] MR. JENKINS: Objection, this is not proper.

TRIAL EXAMINER: I think you have an answer that he never said anything to anyone about how he felt about the Union and no one said anything to him.

* * * *

DANIEL ELLIS

having been called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JENKINS:

Q Please state your name for the record? A Daniel Ellis.

Q How long have you worked for Gissel Packing Company? A Going on nine months this last time.

Q What is your position with Gissel? A Mechanic.

Q Do you have charge of the maintenance of the trucks? A I do.

[fol. 454] Q Mr. Ellis, I will ask you to direct your attention to a period in January of this last year, this year 1965, after the Union had demanded that this company recognize them down there, did any unusual incidents occur with respect to the trucks? A Yes, they did.

Q Will you explain for the Board what occurred? A Well, to start with, we found, I would say, sand in the motors.

Q Can you tell me the circumstances under which you discovered it; how it came to your attention that there was sand in the motor? A I was changing oil on one of the

trucks and, when I drained the oil out, this was just after we blew a couple of motors.

Q Yes? A After we drained the oil out, I called Charles' attention to it and I said, "Look here, there is a handful of sand in that motor; it is something gritty, I don't know what it is, but it looks like sand."

Q All right, continue. A That is how we discovered this sand in the motors.

Q Now, is there any sand around the area there? A Not now there isn't.

Q Was there sand at that time? A Yes, sir, there [fol. 455] was a truckload of sand over by the gas pump.

Q I see.

Do any of the employees of the company move their trucks around in the area where the sand pile was located at that time? A Well, yes, they do.

Q How many truck motors actually blew out? A We had four to blow out in about six weeks.

Q What was the cause of this? A I would say sand.

MR. BAKER: We object.

TRIAL EXAMINER: Overruled.

Q (By Mr. Jenkins) You are a mechanic, is that correct? A That is right, sir.

Q You understand motors, do you not? A Yes, that is right.

Q How long had you been a mechanic? A Twenty-five years.

Q Have you worked for other garages? A I have been in business for myself and I have worked for other people, yes, sir.

Q You understand how combustion engines operate, such as truck motors, do you not? A Yes, that is right.

[fol. 456] Q Based on your experience and knowledge, do you feel—I will start again.

Based on your experience and knowledge, you say that you feel that the sand that was in these motors caused them to blow up, is that right? A That is right, sir.

Q Now, had you ever had any of this trouble before January, any trouble of this type before?

MR. BAKER: We object, this witness has only been an employee of the company for nine months.

Q (By Mr. Jenkins) To your knowledge, had the company ever had any trouble of this type before—

MR. BAKER: Objection, we object to the—

THE WITNESS: I was there before, you know.

TRIAL EXAMINER: Overruled.

Now, Mr. Ellis, when there is an objection, please do not answer until it has been ruled upon and I would like to ask again that you speak up since there is an air conditioner over my head and I can hardly hear you.

Will you do that?

THE WITNESS: Yes, I will.

TRIAL EXAMINER: Now your answer was what?

THE WITNESS: Would you repeat the question?

Q (By Mr. Jenkins) The question was, to your knowledge, had there ever been any difficulty with sand in [fol. 457] the motors or the motors blowing up before this? A No.

Q As I understand your testimony, this incident occurred very shortly after the Union demanded that they be recognized, is that correct?

MR. BAKER: I am going to object to the implication of that question.

It is leading in the first instance, Counsel is testifying. If the witness knows when it happened, let him testify to when it happened.

TRIAL EXAMINER: Do you know when this happened; I know you will not know the exact date.

THE WITNESS: No, I don't know.

MR. JENKINS: I said in January, Your Honor.

THE WITNESS: It was January or February, along in there.

Q (By Mr. Jenkins) Now, about this same time, did you have any problems with any vehicles that were operated by Herbert Mounts, who is known as "Red" Mounts? A Well, yes, I did.

Q Would you explain the circumstances of that? A Well, he blew one up, I think, upon the turnpike somewhere.

I asked him why, when his truck started knocking, he did not pull it over. He said, "I ran it until it caught on fire."

[fol. 458] MR. BAKER: I am going to object to that; it is hearsay.

This witness, I assume, is not a supervisor, so it would not have been in the normal course of business, what Mounts said.

I assume he is offering it for the truth of the matter. It is clearly hearsay.

TRIAL EXAMINER: Is this man a supervisor?

MR. JENKINS: He is in charge of the garage. He is the only one. I do not know whether you would classify him technically as a supervisor, or not, but he is in charge of the garage.

But, what difference does it make, what does his supervisory status have to do with whether it is hearsay?

TRIAL EXAMINER: A statement made by one employee to another employee has a different status than a statement made by an employee to a supervisor.

What do you do in the garage?

THE WITNESS: I am head mechanic, I run the garage myself, no one else does. I take care of all the equipment, I am in charge of all the equipment.

TRIAL EXAMINER: What else do you do?

THE WITNESS: Nothing.

TRIAL EXAMINER: What do you have to do with the other employees?

[fol. 459] THE WITNESS: Well, I don't have nothing to do with them unless they come over to the garage. When they come over to the garage, I tell them what to do.

TRIAL EXAMINER: You tell them what to do?

THE WITNESS: Yes, ma'am.

TRIAL EXAMINER: Do you assign them work?

THE WITNESS: When I want someone to help me I go to Charles and he sends them to me, whoever I want.

TRIAL EXAMINER: He may answer.

MR. BAKER: I do not believe his supervisory status has been established by that, Madam Trial Examiner;

TRIAL EXAMINER: He may answer the question.

MR. BAKER: I would like the record to note my exception, because that witness was on the stand and there is no showing that this man—

MR. JENKINS: I object to Counsel for General Coun-

sel arguing with the Trial Examiner after she has made her rulings.

TRIAL EXAMINER: He may state his reasons for excepting to my rulings just as you state your exceptions to my rulings.

Go ahead.

MR. BAKER: I am reminded of pots and kettles, but I will not go into that.

[fol. 460] He is stating what a witness has said when that witness has heretofore been on the witness stand and it seems to me that the proper way to have gotten evidence as to what Mounts said would have been to ask Mounts about it.

TRIAL EXAMINER: The objection is overruled; he may answer the question.

MR. JENKINS: I will ask the reporter to read the question.

TRIAL EXAMINER: Will the reporter read the previous question and I believe there was an answer.

(The reporter read the previous question and answer.)

Q (By Mr. Jenkins) Now, after he said that, after Mount said that he ran it until it caught on fire, did he make any other statement to you? A Yes, he did, he said, "If it wasn't for a guy like me tearing these trucks up, you wouldn't have no job."

Q (By Mr. Jenkins) Now, after these incidents with respect to the trucks occurred, did you check out the oil supply there to see if you were getting oil with sand in it from the manufacturer; I mean, what was done along that line, if anything? A We taken (sic) a sample of the oil, some oil come out of one of the motors, one that I found sand in, and supposedly they were supposed to have sent it out and had it analyzed.

[fol. 461] We have not heard back on it as yet.

Q Did you check your supply on hand in any of these barrels or containers or wherever you kept it to see if there was any sand in them? A We did.

Q Was there any sand in those? A We taken (sic) a sample of the barrels and taken (sic) a sample out of the truck, and sent them both off and we haven't heard back.

TRIAL EXAMINER: Can you tell me when you sent them, when you sent off the samples?

THE WITNESS: Ma'am, no, I could not.

It was somewhere along in January or February, about when we started having all the trouble.

Q (By Mr. Jenkins) Who did you send the samples to? A I think it was Pure Oil.

Q . . . Where did you actually store the oil before it was put in the individual trucks? A In the garage.

Q What kind of containers did you store it in? A In fifty-five gallon drums.

Q I see.

[fol. 462] Did the employees have access to that container?

I will put it this way.

If an employee had wanted to put sand in that container or those containers, would it have been possible; was it open in such a way that they could have gotten in there? A Yes, it was.

Q These incidents all occurred over approximately how long a period there in January and February? A I would say about six weeks when we had the trouble.

Q Now, you were acquainted with Mounts, were you not? A Yes.

Q You knew him? A Yes, sir.

Q He was a truck driver for the company, was he not? A That is right, sir.

Q Is there any reason that you know of that a truck driver such as Mounts, when a rod broke such as he reported to you had happened to him, would not have stopped their truck rather than running it on until it caught fire and then saying that he was tearing up the trucks to give you a job?

MR. BAKER: I object, that is highly improper, it is an improper question.

What difference does it make what Mounts told him.

TRIAL EXAMINER: What would be the normal practice would be the question.

[fol. 463] Q (By Mr. Jenkins) What would be the normal practice of a driver under these circumstances where he had a rod break or a rod go through the motor such as Mr. Mounts reported to you? A I would not know hardly how to explain it. I don't see any reason why if he is a truck driver, that he would not know or have enough knowledge to pull over and stop when he knew it was going to knock the side of the motor out.

TRIAL EXAMINER: When did this incident happen?

THE WITNESS: Sometime in January.

Q (By Mr. Jenkins) At any time, did the company change its supply of oil from one company to another, this year? A Yes, we did.

Q When did you start buying from a new company, if any? A I don't know, a couple of weeks after we were having all of the trouble. I told Charles it would be a good idea to change oil companies, you know.

Q Right.

Was the oil that was taken from, that you were getting from Keystone, I believe it was at that time, is that correct? A No, we were getting it from Pure Oil at that time.

Q I see. A We are getting it from Keystone now.

Q Yes, I see.

[fol. 464] Was the oil that you were getting from Pure Oil at that time used in other trucks? A Yes, it was.

Q Did you have any trouble with those trucks? A (Nodding negatively.)

TRIAL EXAMINER: You will have to speak up so the reporter can hear you and get it on the record.

THE WITNESS: No, ma'am, we did not.

Q (By Mr. Jenkins) Was the oil bought a barrel at a time or several barrels at a time? A Just one barrel at a time.

Q Was the oil that was in the barrel at the time these incidents occurred used also in other trucks at that same time? A That is right, sir.

Q Did they have any trouble with those trucks? A No.

[fol. 465]

CROSS-EXAMINATION

BY MR. BAKER:

Q You say you told Mr. Charles Gissel that you should get oil from some other place? A I told him it would be a good idea to change.

Q Why; why did you think it would be a good idea to change? A Well, I didn't know whether it was in the oil or what. I mean, I could not swear there was sand in there but, I mean, there was a whole handful of sand.

Q Go ahead. A I told Charles I thought it was sand. There was a sand pile over by the pumps and it was real gritty, I mean, you are not going to put a whole handful of sand down your motor and expect your motor to hold up.

Q Did you test the oil in the barrel your self to see if it had any sand in it? A We found—we couldn't find anything. I called it to Charles' attention and he came over there and I said, "Charles, we should drain the oil out of the barrel and take the oil we got out of the motor and send it off and have it analyzed."

We did that and we have not heard back as yet.

[fol. 466] Q Did you try to feel of the oil that was in the barrel to see if it had sand in it too? A Yes, we did.

Q Did you feel anything? A No, not in the new oil, no.

Q By the way, this new oil, was it reused oil? A Well, it shouldn't be. I mean, it comes right direct from Pure Oil. It is in fifty-five gallon drums.

Q Do not all oil companies sell reused oil, reprocessed oil? A That, I couldn't tell you.

Q For some reason, you thought you ought to change suppliers? A Well, yes.

Q Now, at the time you thought there was sand in the oil, did you consider then or think that it was put in there by the employees or an employee? A Well, let's put it this way, it did not get in there itself, that is for sure. Somebody had to put it in there.

Who did it, I don't know.

Q If it was in the oil? A That's right.

Q You knew it was in the oil? A That's right.

But I drained the oil out of a new truck, another [fol. 467] truck, I caught it just in time, the—at the time Red's blew up. In fact, I didn't catch it on the truck, the trucks had already blew up, because when it knocked the side of the motor out, there wouldn't be no oil left in them.

Q So, the sand you found was in these trucks that did not blow up, is that right? A One truck, yes.

So, the one that we sent off to have analyzed was the one that Mounts was driving, Truck No. 71.

Q I thought you said— A There was enough oil in the truck when I pulled the pan down, that we got about, I would say, a half pint of oil out of it and that is what we sent off.

Q Is it not true that anytime you take a pan off of a truck, you are going to find a lot of slush and grit and stuff down in there, is that not correct? A We change oil every week on those trucks.

We change it every week.

Q You described what happened to Mount's truck; it started knocking and doing this and doing the other thing.

How do you know what happened to the truck? A Well, he told me personally himself that he threw a rod in it and that is when I said, "Why didn't you pull over and stop?"

[fol. 468] Q I see. A He said he ran it about five miles after the rod started knocking.

He said finally it caught fire and then is when he pulled it over, pulled the truck over and stopped it.

Q That is what he said, what he told you? A Yes, that is what he told me.

Q I see. A That is all I know, what he told me.

Q Is it not possible for a rod to be thrown and instantly go to the side of the motor without causing any preliminary warning or noise? A Well, he have had rods, I have had rods to go out before in different cars.

Unless you keep driving them, they won't go out the side.

Of course, when they start knocking, you can hear them, if you know anything about a truck at all.

Q All right. A Naturally, if you just keep driving it, it is naturally going to come all the way loose and come out the side.

Q Was Mounts a mechanic? A I couldn't tell you, he never did work with me.

Q You do not know what he knows about cars? A No, I don't.

[fol. 469] Q You do not even know, of your own knowledge, whether or not this rod actually knocked or made a noise before it went out, do you? A Yes, I do.

Well, I checked them trucks before they go out.

Q I am asking you, of your own knowledge, you do not know if the rod gave any preliminary warning before it came through the side of the block? A I will say this, it was not knocking when he left with it.

Q I do not believe that is quite the question.

It is possible for a rod to go out without knocking first? A That is right.

Q You do not know, in this situation, whether it did do that or not? A That's right, sir.

Q Now, you say this happened in January? A The latter part of January or the first of February.

Q Did you report to anyone what Mounts had told you? A I told Charles.

Q When? A When he told me.

Q As soon as Mounts told you what had happened, you went to Charles and told him? A I told Charles to pull him off the truck.

[fol. 470] Q Did he? A I guess he did.

Q Did he drive after that? A No, he did not.

Q All right. A He certainly did not.

Q But, he worked after that? A Yes, he did.

Q It was sometime after that before he was let go, was it not? A I don't know how long it was.

I don't have anything to do with the plant across the street, I run the garage only.

Some of the boys, I don't even know their names. I know their faces, but I don't even know their names.

Q You do all the work yourself? A That is right.

Q Who do you get help from, you say when you need help, you get it; how often do you need anybody over

there to help you? A Well, like a spring, a big heavy spring to put in, I call them over to help me lift the spring up in there, I get help for that.

Maybe once or twice a week.

[fol. 471] Q About how often, did you say? A Maybe once or twice a week.

Q Has anybody helped you this week? A Yes.

Q Who? A Rush Moore.

Q Who helped you last week? A Nobody.

Q Who helped you the week before that? A Nobody.

Q Who helped you the week before that? A Nobody, I don't think.

Q How about three or four weeks ago? A Well, I haven't had any major trouble in the last three or four weeks that I know of.

Q How about the last two or three months, besides Rush Moore, who has helped you? A George Collins.

Q When was that? A He helps me every Saturday grease and change oil and do little minor repairs, maintenance work.

Q Where does he work otherwise? A He works over in the sausage room.

Q George Collins, did you say? A Yes, that is right.

[fol. 472] Q He helps you every Saturday? A Every Saturday, but not all day.

Sometimes he helps me all day and some days he does not come over until 10:00 or 11:00 o'clock or noon maybe and then he helps me until around 3:00 or 3:30 o'clock. It is just whenever I get done and close the garage up.

Q And he changes oil and greases the trucks? A Yes, he helps me, yes, sir.

Q Did you take the oil out of all the trucks? A Pardon me?

Q Did you take the oil out of all the trucks when one of them blew up; did you check the oil in all of the trucks? A No, sir, I didn't.

Q You did not bother to see if any of the others had any sand in them? A No.

Q Why did you not do that? A Well, they were running all right, I didn't see any sense of that.

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[fol. 474] ROMAN EDWARD LEWIS

was called as a witness by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JENKINS:

Q What is your name? A Roman Edward Lewis.

Q How long have you worked for the Gissel Packing Company? A Full-time, two or two and one-half years.

Q Did you work for them part-time before that? A Yes.

Q When? A During my high school years.

Q Are you related to any members of the Gissel family? A Yes, sir.

Q To what party are you related and what is the relationship? A Mrs. Gissel is my grandmother.

Q What is her first name? A Paula.

[fol. 475] Q During 1965, what has been your job down at the Packing Company? A I work in the shipping room and whenever needed, on delivery trucks.

Q What do you do in the shipping room? A We fill orders to be shipped out to the packing places.

Q Do you work yourself or do you direct others, other people's work? A Well, I work by myself and, if there is other workers, I can direct them.

Q You are acquainted with Charles Gissel, are you not? A Yes, sir.

Q I want to direct your attention back to a week in April, about April 20, on a Tuesday following a Saturday when there was a union meeting at the Governor Cabell Hotel.

Do you place in your mind the time I am talking about, sir? A Yes, sir.

Q On or about that time, did you have any conversations with Herbert "Red" Counts with respect to his work or where he was working or any such conversations along that line; and, if so, state what was said? A With his work?

Q Yes, or where he was working or where he intended to work? A Yes, I think so.

[fol. 476] Q If you did, state as best you can remember what he said and what you said, if anything. A He was to work with his father-in-law on a plumbing job.

Q How did you get this information? A Well, we were talking at or on break time in the morning.

Q Whereabouts in the plant were you when you were talking? A Outside the office or out on the shipping platform.

Q Exactly what did Red Mounts say to you on that occasion, if you remember? A That he was, that his father-in-law was a plumber, and he had made some money, twenty dollars I would say, I am pretty sure, that is what he said he made that afternoon before.

Q Do you remember on what day of the week this was that you had this conversation with him? A No, I couldn't.

Q Do you recall any incidents pertaining to or about when he did or did not show up for work or finish out a day on Wednesday at about this time?

MR. BAKER: I object, that is leading.

TRIAL EXAMINER: Overruled.

Q (By Mr. Jenkins) Can you answer the question?

A Will you repeat the question, please?

[fol. 477] Q Do you remember anything or any incident that happened about Mounts either staying or not staying and finishing his day's work about the time of this conversation; either before it or afterwards? A It was Wednesday that he took off, I think, yes, sir, it was on Wednesday I would say.

Q What were the circumstances of that; tell us what happened?

A Well, he worked the morning of Wednesday and he had took off Wednesday afternoon without leaving any information that he was going and it was Tuesday that we were talking, the day before.

TRIAL EXAMINER: How do you know?

THE WITNESS: Because I just remembered it was the day before and it was Wednesday which is our busy day and that was the day he took off.

Q (By Mr. Jenkins) Now, did he say anything to you on Tuesday about taking off? A No, sir, he just said he had worked and made twenty dollars in an after-[fol. 478] noon.

Q What was the schedule at that time, Mr. Lewis, as to what sort of schedule—well, what sort of schedule was Mounts and Frye on at that time? A They were working full weeks but at that time the business, I think, had slacked off and they were sent home a half day early the day that he had made the twenty dollars; and, Wednesday was always a busy day, I mean, we always worked until late in the evening.

Q Was—or, has anybody ever been sent home early on a Wednesday? A No, sir, never on Wednesday.

[fol. 479] Q Was this a regular company rule or policy that everybody had to work on Wednesday, the busy day? A Yes.

Q Now, you say that Mounts and Frye were sent home early.

Were other employees sent home early also by reason of the slack work? A Yes, sir, there were others.

Q Now, what was the first you knew, if this was in April, that Mounts and Frye did not stay and finish out the day on Wednesday?

How did this come to your attention? A We all worked in the shipping room—

Q When you saw "We," who do you mean? A I mean employees that were scheduled to work in the shipping room.

Q Was that Frye and Mounts? A Yes, they were two of them.

Q Was that you? A Yes, sir.

Q Was that other employees too? A Yes, sir.

[fol. 480] Q All right, go ahead and tell us what happened? A We were all working in there in the morning and when noon hour came, everybody took their lunch, and then when it was over, they didn't report back to work.

Q When you say "They didn't report back to work," who do you mean? A Jerry Frye and Herbert Mounts.

Q All right, and you observed that they did not report back to work? A Yes, sir.

Q What did you do, if anything? A There wasn't nothing I could do about it.

[fol. 481] Q After you observed that they were not did you make any investigation to find out where Mounts [fol. 482] and Frye were and what they were doing? A Yes, sir.

Q Now, you tell the Examiner exactly what you did? A I told Charles Gissel that—

TRIAL EXAMINER: This is Charles Gissel?

(Indicating)

THE WITNESS: Yes, ma'am.

Q (By Mr. Jenkins) Go ahead. A I told Charles Gissel about what they, about what Red was telling me, about him working and that he could make more money there and—

Q Now, where was this where he was working? A It was between 18th and 19th Street on or just off of Third Avenue in the rear alley.

Q And Red had told you on the day before that he could make more money working there for his father-in-law? A Yes, sir.

Q All right. Now, you told this to Charles the day on Wednesday that you discovered they were not there, is that right? A Yes, sir.

Q All right. I will ask you whether or not, to your knowledge, Charles knew they were not there until you told him?

[fol. 483] A Well, I don't know whether he already knew that they were gone.

Q What did you do then? A He asked us to go up to where they were supposed to be working and check to see if they was on another job.

Q All right. Did you do this? A Yes, sir.

Q Where did you go? A I went to the address on

the street I gave a while ago, 18th Street off of Third Avenue.

Q Where did you get that address? A It is where he told me they were working.

Q Who told you? A Herbert Mounts.

[fol. 484] Q All right. When you went there, did you— what did you see? A Jerry Frye and Herbert Mounts were working on a plumbing job.

Q What time of the day was it on Wednesday when you observed this? A The time, I couldn't give it definite.

Q Well, when in relevance to noon? A Well, it was two to three hours after dinner, after 12:00.

Q That would make it about what time then? A 2:00 or 3:00 o'clock, 3:00 o'clock, somewhere in there.

Q Between 2:00 and 3:00 o'clock in the afternoon? A Yes, sir.

Q At this time, was everyone else working down at the plant? A Yes, sir.

Q Now, when you saw this, what did you do, if anything? A There were four of us, three besides myself, and I just saw them working and came back to the plant and reported it and went back to work.

Q Who did you report it to? A Charles Gissel.

[fol. 485] Q Who were the other ones who went with you? A Dan Ellis, Rush Moore, and Cliff Carley.

Q When you got up to this job where they were working, during your company business hours down here, did you have any conversation with Mounts or Frye up there? A No, sir.

Q Did you go on to the site? A Yes, well, they were working just off the alley and we were standing in the alley and looked right at them.

Q Then you went back and reported this? A Yes, sir.

Q (By Mr. Jenkins) Tell about any other things where they were asked to do something in their work, if there is such an incident; if there is not, say there is not. A Well, in shaking hides at this time, several of the fellows that was hired for shaking hides had quit and it put them short back there and we were to take em— [fol. 486] ployees from the plant to finish up the job.

They were asked to go back and refused.

Q Now, when you say "They" who are you talking about? A Kenneth Adkins, Jerry Frye, and Herbert Mounts.

Q Did other employees that you requested to do this work do it or not? A Yes, sir.

Q Had Jerry Frye and Herbert Mounts shaken hides before? A Yes, sir.

Q This time, when you ask them, they refused to do it? A Yes, sir.

Q What did they do, if anything—

MR. BAKER: I object to that type of question, Your Honor.

TRIAL EXAMINER: What did they say?

THE WITNESS: Well, we had had a conversation before, you see, it lasted approximately three days, and I was talking with one of them, Jerry Frye the day before and he said that they did not intend to do it; that they were going to quit first.

So, when I got employees from other parts of the plant and still needed some more, I asked them and they refused.

TRIAL EXAMINER: What time of day?

THE WITNESS: It was approximately 3:00 in the evening.

[fol. 487] Q (By Mr. Jenkins) They had done this work before when requested, is that right? A Yes, sir.

Q Now, for the first time, they refused, is that right? A Yes, sir.

Q (By Mr. Jenkins) Was it or was it not part of your duties the day they were to shake hides, to go around and tell the various employees that they were to do it? A Yes, sir, Mr. Gissel was away at the time and I had been told, he had told me to draw from the plant if needed.

Q Had you ever done this before? A As working over them?

Q Yes. A I had worked with them.

Q I see. No one questioned your authority to direct them, did they? A No, sir.

[fol. 488] Q (By Mr. Jenkins) You worked in the same area with Mounts and Frye, did you not? A Yes, sir.

Q During March and April of this year, describe their record as far as whether they would appear on time for work or not? A Well, working time would start at 6:00 o'clock and they were late pretty often and Charles had told them they would be dismissed if they didn't start coming in on time.

Q When he told them this, did this correct the situation? A No, it continued.

* * * *

CROSS-EXAMINATION

BY MR. BAKER:

Q Did they punch a time card? A Yes, sir.
[fol. 489] Q If they were late, the time cards would indicate that, would it not? A Yes, sir.

* * * *

[fol. 493] Q Had he laid [off] Mounts and Frye before at 11:30 before the Monday and Tuesday of this week? A Yes, sir.

Q When? A Before.

Q When? A I don't know exactly.

Q Do you know at all? A Do I know all of what?

Q Do you know at all if he ever let them off, let them go at 11:30 before? A Yes, sir, he had let them go.

Q Tell me when? A Well—

(Pause)

TRIAL EXAMINER: You do not have to know the exact day; you can estimate the time.

Was it a month, three months, six months or a year?

THE WITNESS I could not say to that, just that he had, in the weeks before maybe, just laid them off for a half a day.

[fol. 494] Q (By Mr. Baker) Mr. Lewis, you are not telling us the truth, are you?

MR. JENKINS: I object.

TRIAL EXAMINER: Sustained.

MR. JENKINS: That is grossly improper and I ask that Counsel be reprimanded for making an insulting remark like that to the witness on the stand where he is in a situation where he cannot reply and does not have his own Counsel.

That is grossly improper.

TRIAL EXAMINER: The record will show your statement.

Continue, Mr. Baker.

Q (By Mr. Baker) Now, you went up there to catch these boys working; you knew they were going to be there, did you not?

MR. JENKINS: Objection, argumentative.

MR. BAKER: I am not arguing.

Q (By Mr. Baker) He said on Tuesday that he was going to be up there on Wednesday, did he not? A He said he was—

Q He said he was going to go, did he not? A No, sir, he just said that he had been working there the day before.

Q Now, Mr. Lewis, you knew on Tuesday that he was not going to work on Wednesday afternoon because he was told not to, is that not correct?

[fol. 495] MR. JENKINS: Objection, he is badgering the witness.

Q (By Mr. Baker) I want to remind you are you under oath, sir.

TRIAL EXAMINER: Mr. Baker, ask him what he knew from his own knowledge.

Q (By Mr. Baker) Did you have a conversation with Mounts, you did on the day before, did you not? A Yes, sir.

Q You knew, from that conversation, that he would be working up there on Wednesday? A No, sir, I did not.

Q You went and told Mr. Gissel on the next day that is where he was, did you not? A I said, I said that is where he told me he had worked the day before.

Q He told you he was going to be there, did he not?
 A I thought so, yes, sir.

Q And you took four people up there? A Yes, sir.

Q To be witnesses? A Yes, sir.

[fol. 498] Q (By Mr. Baker) At the time these two men were told to come in at 5:30 and work until 11:30, there were others, other employees who were told to come in at 12:00 and work until some time in the afternoon, were there not? A I don't know about that. I know about they were told to come in at 5:30 and work until I don't know when.

Q You do not know how long they were told to work?
 A No, sir.

[fol. 500] TRIAL EXAMINER: You say that the employees never left on Wednesday, never left early on Wednesday?

THE WITNESS: Yes, ma'am, that is right.

Q (By Mr. Baker) Never in the history of the company did they ever leave early on Wednesday? A I couldn't say to that; I have not been there working through the history of the company. I am not as old as the company.

Q Did Mr. Gissel tell you why he was laying these boys off at 11:30 on Monday and Tuesday? A I said once that he laid them off because of lack of orders to fill.

[fol. 501] REDIRECT EXAMINATION

BY MR. JENKINS:

Q My point is, Mr. Lewis, was this schedule worked out for Mounts and Frye alone or were other employees involved in it also? A There was one other that I can recall now.

Q Who was that? A Elmer Maynard.

[fol. 502] Q All right. Did Elmer Maynard work on Wednesday afternoon, the Wednesday afternoon that you

had to go looking for these other fellows? A (Pause.) I think he was.

RECROSS EXAMINATION

BY MR. BAKER:

Q Mr. Lewis, is it not a fact that Elmer Maynard came in at noon and worked in the afternoon; he was not coming in at 5:30 in the morning, was he?

He is the man who came in at 11:30 and worked in the afternoons when the other boys were gone, is that not right? A No, sir, I can't quite remember that.

Q You do not know whether he is working in the morning or whether he is working in the afternoons? A No, sir, I don't.

Q You do not know whether he worked on Wednesday morning? A No, sir.

Q You do not know whether he worked Wednesday afternoon? A No, sir.

[fol. 505]

TERRY LEWIS

was called as a witness by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JENKINS:

Q Now, Mr. Lewis, it is very difficult to hear in here and please try to talk loudly so that everyone can hear you.

What is your name? A Terry Lewis.

Q Now, if you will talk very slowly, it will be easier for all of use to hear you.

Do you work down at the Gissel Packing Company?

A Yes.

Q What is your job down there, Terry? A To work in the shipping room and load trucks.

TRIAL EXAMINER: Please speak up so that I can hear you.

THE WITNESS: 'To load trucks and work in the shipping room.

[fol. 506] Q (By Mr. Jenkins) How long have you been down there, Terry? A I work part-time, I go to school.

Q How long have you been working part-time? A Off and on?

Q Yes. A I guess about three summers and after school.

Q Do you work down there in the winter at all? A I just work after school in the winter.

Q Do you do the truck loading yourself or do you tell other people what to do? A Well, no, sir, I help load.

Q You just work yourself? A Yes, sir.

Q Are you hourly paid? A I get the same wages as the rest of the employees.

Q I see. Do you have any right to hire or fire anybody? A No, sir.

Q You do not consider yourself the supervisor or a boss of any body down there, is that right? A No, sir.

MR. BAKER: We will stipulate that he is not a supervisor.

Q (By Mr. Jenkins) Now, Terry, in April of this year, this is last April, did you see any notice at any time about a union meeting for any of the employees down there? A Yes, sir.

[fol. 507] Q Where did you see the notice? A In the men's restroom.

Q What did the notice say or what the—what was the substance of it? A "Sehon-Stevenson and Gissel Packing Company and Logan Packing Company."

Q Now, you were saying Sehon-Stevenson, Gissel Packing Company, and Logan Packing Company? A Yes.

Q All right, go ahead. A It said that all employees will meet at the Governor Cabell Hotel on Saturday, I think it was at 2:30.

Q Was this on or about April 17, was this the Saturday or do you remember? A I don't remember the date, it was on a Saturday afternoon.

Q And it said "All employees meet at the Governor Cabell Hotel", is that right? A Yes.

Q You saw this notice in the men's restroom? A Yes, sir.

Q All right. Now, did you or did you not go down to [fol. 508] the Governor Cabell on this Saturday? A Yes, sir, I did.

Q Were you or were you not going to go to the meeting? A I was going to the meeting but I changed my mind.

Q You were but you changed your mind? A Yes, sir.

Q Tell us what happened? A Well, I saw the employees there and I was afraid of the employees; so—I figured they would say something about it. I was a little worried then.

Q What made you worry when you got down there? A I figured I didn't have a right to be there really because—

Q Well, did anybody say anything or do anything that lead you to that conclusion; did they give you any funny looks or anything?

MR. BAKER: Oh, I object.

Q (By Mr. Jenkins) Tell us what happened?

TRIAL EXAMINER: Just ask him what happened.

Q (By Mr. Jenkins) Tell us what happened.

Terry, tell us what happened then? A Elisha Watts made a smart remark, he asked me what I was doing down there and gave me a dirty look.

Q What conclusion did you draw from this?

MR. BAKER: Objection.

TRIAL EXAMINER: Sustained.

[fol. 509] As a result of this, what did he do, that is your question.

Q (By Mr. Jenkins) As a result of this, what did you do? A I went on outside.

Q I see. A I went outside and stayed.

Q When you went down to the Hotel, did you try to sneak around and hide from anybody? A No, sir.

[fol. 510] Q Did you have a conversation with Watts?
A Yes, sir.

Q Now, did you see any of the other employees down there? A Yes, sir.

Q Were you hiding from them? A No, sir.

Q Well, there is testimony here that you, at some stage of the day ran away from the hotel; did you run away from the hotel? A No, sir, I did not.

Q Now, while you were there at the hotel, did you make any telephone calls? A Yes, sir.

Q Who did you call? A I called by girlfriend and my aunt.

Q All right, what was the general purpose of your call to your girlfriend, was it social or did it have any other purpose? A Well, no.

Q Did it have anything to do with the packing company? A No, sir.

Q All right. You called your aunt, is that right? A Yes.

[fol. 511] Q What is her name? A Freda, Alfreda.

Q Alfreda? A Yes, sir.

Q What is her last name? A Alfreda Closterman.

Q Spell that for the reporter, please. A C-l-o-s-t-e-r-m-a-n, Closterman.

Q What did you say to Mrs. Closterman? A She asked me where I was and I told her and then she told me to come on back.

That was it.

Q Did you give anybody a report on who was there?
A I don't remember what I said to her now. I just told her I was up there and she told me to come on back.

Q After you got back, where did you go? A I went home.

Q You went to your home? A Yes, sir.

Q Did you ever go inside the meeting? A No, sir.

Q Did you ever hear anything that transpired or happened at the meeting? A No, sir.

[fol. 512] Q Did you ever undertake to give a report to anybody in the management of the Gissel Packing Company as to what happened at the meeting? A No, sir.

Q When you went down there, as I understand it, you

had seen a notice that said, "All employees be there", is that right? A Yes, sir.

Q You were interested, is that right? A Yes, sir.

Q So you went? A Yes.

* * *

[fol. 512]

CROSS-EXAMINATION

Q (By Mr. Baker) Terry, you say you called your girlfriend? A Yes.

Q And you called your aunt? A Yes.

Q Why did you call your aunt? A I called her and told her where I was and she told me to come on back home.

[fol. 513] Q Do you live with your aunt? A No, sir.

Q Who do you live with? A My mother and father.

Q Why did you call your aunt and tell her where you were? A Well, I was going to see if my Mom was there, but I was so scared then that I didn't ask her.

CROSS-EXAMINATION

BY MR. BAKER:

* * *

[fol. 518] Q Why were you up there if you did not think you should have been there? A Well, it says, "To all employees" and I wanted to see what a Union meeting was like, in the first place.

Q You wanted to see who was there? A No, sir.

Q Then you called your aunt after you found out? A I called my aunt and asked her where my mother was.

* * *

Q You wanted to see if your mother was down at the plant? A Yes, sir, she works there.

[fol. 519] Q Your mother works there also? A Yes, sir.

Q What does she do? A She writes up orders and figures bills.

Q Was your mother there? A No, sir, I don't think she was there. I was so scared then.

Q Still, because of Watts asking you to go down to Sammys? A Sir?

Q Because Watts had asked you to go down to Sammys, you were still scared? A No.

Q Now, this did not have anything to do with the Union meeting, did it?

If there had been no Union meeting and Watts had still asked you to go down to Sammys, you would still have been scared? A Would you repeat that?

Q Well, suppose there had not been a Union meeting and you were just up on the street and Watts asked you to go down to Sammys, you would have still been scared? A I didn't want to go down there in the first place.

Q The Union meeting did not have anything to do with [fol. 520] you being scared, did it? A Well, (in the first place, I didn't want to go there because I was afraid I would be pointed out to the head of the Union by the guys there and I didn't want them to run me off from there.

Q You did not want to go to the Union meeting? A I wanted to go, yes, sir.

Q You just said you did not want to go? A I wanted to go at first.

So, then I saw them and I changed my mind; I didn't want to go then.

Q You saw who? A I saw them guys down there and I was afraid they would report me to the Union head, whoever the head of it was, and they would run me off.

Q This sign you saw stated that all employees were going to be there? A Yes.

Q You knew they would all be there? A Yes, sir.

[fol. 527]

REDIRECT EXAMINATION

BY MR. JENKINS:

Q Now, I want to ask you whether or not Elisha Watts made any threat to you down there?

A He accused me of stealing his coat and all that, and that he would get a warrant for me.

[fol. 528] Q Did this conversation take place down at the hotel? A Yes, sir.

Q He accused you of stealing his clothes? A His coats, he has coats in his locker.

Q (By Mr. Jenkins) What about it, at the time you had this meeting down there where you saw Elisha Watts down there at the hotel, did you have any reason to be afraid of him? A In a way, I did, because I didn't know what he was going to tell the other employees.

[fol. 536] BERNARD SIMON

was called as a witness by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JENKINS:

Q What is your name? A Bernard Simon.

Q Bernard, how long have you worked for the Gissel Packing Company? A Eight years.

Q Are you working for them now? A Yes, sir.

Q What kind of work do you do for them? A I am in the shipping department.

Q Exactly what work do you do, yourself? A I assemble orders.

[fol. 537] Q Do you work yourself or do you tell other people what to do? A I work myself and tell some of the others what to do too.

Q I want to direct your attention—Strike that.

TRIAL EXAMINER: Off the record for a moment, gentlemen.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

MR. JENKINS: Before we continue, I would like to request that a Mr. Frye and I believe it is a Mr. Thomas Burchell or whatever his name is, I object to their presence in the hearing room. I specifically make the objection with respect to Mr. Frye.

TRIAL EXAMINER: Well, your objection to Mr. Frye being in the hearing room is overruled and I assume that Mr. Burchell has testified already.

MR. BAKER: That is correct.

MR. JENKINS: All right.

Could I have my last question or the beginning of the last question read by the Reporter?

TRIAL EXAMINER: Yes, the Reporter will read the last question.

(The Reporter read the previous question and answer.)

[fol. 538] Q (By Mr. Jenkins) Mr. Simon, I want to call your attention to some testimony that has been referred to in this case about a conversation in February on the loading dock at the Gissel Packing Plant here in Huntington, West Virginia, wherein a witness testified that Charles Gissel made the statement in your presence:

"That if the union got in he—" meaning Charles Gissel — "would take his money and leave."

Do you remember any such conversation taking place in your presence? A I do not.

Q Do you have any reason to believe that any conversation of this purport or of this meaning was said by Charles Gissel in front of you at any time? A No.

[fol. 540] . **LOWELL WETZEL BAILEY**

was called as a witness by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JENKINS:

Q What is your name? A Lowell Wetzel Bailey.

Q How long have you worked for Gissel Packing Company? A This November will be a year.

Q In what of—Excuse me, in what part of the plant do you work? A In the sausage room.

[fol. 541] Q What kind of work do you do there? A I work on stuffing.

Q Do you work yourself or do you tell other people what to do? A I work myself.

Q Did you attend a union meeting about April 17, any way, the one on a Saturday that was held down at the Governor Cabell Hotel? A Yes, I did.

Q Did you see a notice in the men's wash room telling you about this meeting?

MR. BAKER: I will object to that question as leading.

TRIAL EXAMINER: Overruled.

He may answer.

Q (By Mr. Jenkins) Go ahead and answer the question. A Yes, I seen it.

Q So, you went to the meeting, is that it? A Yes, I did.

Q I will ask you whether anyone from the Food Store Employees Union was in charge of the union meeting there? A Personally, I don't know the guy.

Q Did he represent himself as being from the union? A I guess he was, he was the one that stood up and done the talking.

Q Is that right? A Yes.

[fol. 542] Q And, he is the one that stood up in front of the meeting? A Yes.

Q Now, I would like to know what statements—Strike that.

Now, were there other employees—

TRIAL EXAMINER: Your last answer was "Yes?"

THE WITNESS: Yes.

Q (By Mr. Jenkins) Will you state whether or not it was your understanding that he was from the union? A That is what I understood.

Q Now, I want to know what this man said, if anything—Strike that question.

Were there other employees from the Gissel Packing Company there? A Yes.

Q Were there employees from other companies in Huntington there? A Logans and I think there was some from Sehon-Stevenson, I think, too.

Q What did this man that you thought was from the union and that was in charge of this meeting, what did he say with respect to things that you all were supposed to do down at the various companies?

MR. BAKER: I object, I do not know what the materiality of this is.

[fol. 543] MR. JENKINS: It will become apparent.

MR. BAKER: When was the meeting held and who did the talking; these things were not brought out.

TRIAL EXAMINER: Is this the meeting at the Governor Cabell Hotel?

THE WITNESS: Yes, I guess it was.

TRIAL EXAMINER: This is the meeting to which the witness is testifying, the meeting at the Governor Cabell Hotel?

MR. JENKINS: Yes, Your Honor.

TRIAL EXAMINER: What day of the week was this meeting?

THE WITNESS: It was on Saturday.

If you want the letter and I can find it, I will just bring it up.

TRIAL EXAMINER: You got a letter?

THE WITNESS: Yes, I got a letter, they invited me in.

TRIAL EXAMINER: All right.

MR. BAKER: I do not see what the materiality is.

This is a good deal after the demand was made and the union had a majority, it was after the company had refused to recognize the union; and, it was a meeting involving at least three employers to which the witness is testifying.

We do not know who it was even who was doing the talking.

[fol. 544] So, I just cannot see the materiality of what the union representative said three or four months after there was an organizing campaign and the union got the majority and made the demand on the company and the company refused recognition.

TRIAL EXAMINER: He may answer the question.

Q (By Mr. Jenkins) The question, Mr. Bailey, is what did this man say down there on the subject of what you all were to do at the various companies; what was said? **A** He was talking about breaking glass in a parking lot and nails or something in a parking lot, sir.

Q All right. **A** He told about this, and I don't know whether it was in Charleston or Parkersburg or where it was.

TRIAL EXAMINER: I cannot hear you, Mr. Witness.

THE WITNESS: I don't know where it was at, it was in Charleston or Parkersburg or something—or someplace like that.

TRIAL EXAMINER: Well, I cannot understand the witness.

Q (By Mr. Jenkins) Please repeat it again, and speak loudly. **A** He was talking about the breaking of glass at a parking lot, or something and it was either a parking—Well, it was at either Parkersburg or Charleston or someplace and he was talking about some men working while they were out on strike and the union was going to go in and get them.

[fol. 545] If they didn't come out, they were going in to get them.

Q What else was said?

MR. BAKER: As I understand it, Madam Trial Examiner, this is apparently, from what he says, it was something that apparently happened at a strike at Parkersburg or Charleston.

THE WITNESS: It might have been.

.

Q (By Mr. Jenkins) Mr. Bailey, what was said down there, if anything, as to what you all at Gissel and the other people at the other companies were supposed to do down there at your companies; what was your understanding of what was said?

MR. BAKER: I will object to his understanding.

TRIAL EXAMINER: What was said?

Q (By Mr. Jenkins) Yes, what was said? **A** Just like I said, about breaking glass and the parking lot and nails in the parking lot. I don't know whether it was

breaking the glass in the parking lot or whether it was already broke.

[fol. 546] The way I figured it out, he wanted us to do something like that at our plant.

TRIAL EXAMINER: * * * He said he figured this is what was meant.

THE WITNESS: That is the way I took it.

Q (By Mr. Jenkins). Do you remember the exact words that were said? A No, personally, I don't.

Q You just do not remember the substance or meaning of what was said, is that it? And, this is the meaning as you understood it, is that correct? A That is what it meant to me.

MR. BAKER: Motion to stike.

TRIAL EXAMINER: Overruled.

Q (By Mr. Jenkins) Now, Mr. Bailey, I want—Strike that.

Do you remember the last day that Red Mounts and Frye were down at the plant on a Thursday, early in the morning, about the week sometime of April 18 or 19, I don't think that it is in dispute, the last day they were [fol. 547] around the plant down there? A I won't say that was the last day.

Q Do you remember the week I am talking about? A I am pretty sure I do.

Q All right. Now, I want to ask you this.

There has been testimony in this case that in your presence in the sausage room on Thursday, of that week early in the morning, that Charles Gissel sitting here at Counsel table said to Frye:

"You can take the union and stick it."

Or, some words to that effect.

Now, did Charles Gissel make any such statement as that in your presence down there? A Charles Gissel was in the office.

Q Did he ever make any statement in the sausage room there to that effect at that time? A No. Not that I heard.

Q Did you ever hear him make that statement at any other time? A No.

MR. JENKINS: You may cross-examine.

CROSS-EXAMINATION

BY MR. BAKER:

Q Mr. Bailey, let us go back to that union meeting and will you tell me what you heard this man say?

[fol. 548] What did he say about this broken glass in the parking lot at Parkersburg that you spoke of? A Well, probably to keep the employees—

Q Now, I am not asking you probably; I am asking you what did he say.

You have testified he said something; you have testified you concluded that this meant other things to you.

Now, just tell me what he said?

MR. JENKINS: Objection, he said he could not remember the precise words.

TRIAL EXAMINER: Tell us as nearly as you can what he said.

Q (By Mr. Baker) Now, speak up so I can hear you; I could not hear you before. A He said there had been glass, broken glass, in the parking lot.

He said they had broken glass in the parking lot.

Q Who? A He didn't say who.

Q He said there had been some glass broken? A In the parking lot, there was nails and stuff like that in the parking lot.

Q Did he say who did it? A No, he didn't say.

[fol. 549] Q Did he say where it was done? A I told you it was either Parkersburg or Charleston.

I don't remember which one he said.

Q How did this business of the nails and the broken glass come up? A That was out of his mouth.

I was way back in back when he said that. I was plumb in back.

Q You did not hear what he said? A Yes, I heard what he said, I told you.

Q How did it come up?

MR. JENKINS: Objection to the question how did it come up.

This man was speaking—

TRIAL EXAMINER: What I think he means is what caused this statement to be made.

Q (By Mr. Baker) What caused this statement to be made, yes, what had been the discussion before, do you know?

TRIAL EXAMINER: What had been said before?

Q (By Mr. Baker) What had he been talking about just before that? A I don't remember just what all he was talking about. He was talking about Logans, he was talking about Sehon-Stevenson, and he was talking about wherever these things happened, I don't know just where that was, and about the employees coming out and if they did not come out they would go in and get them.

[fol. 550] They had a fight out on the street.

TRIAL EXAMINER: They had what?

THE WITNESS: They had a fight out on the street, that is what he said.

He kept talking about this broken glass and nails over and over.

Q (By Mr. Baker) Now, you said you heard him say parking lot, you heard him say nails, you heard him say glass, is that right, you heard those words? A Yes.

Q You do not know just in what context they were said, but you heard him use the word "Glass"? A Yes.

Q You heard him use the word "Parking lot"? A Yes.

Q You heard him use the word "Nails"? A Yes.

Q Now, you said that meant something to you; what did that mean to you? A To me?

Q Yes, to you? A He might have meant for me to do something down where I am working and get the guys mad at me.

Q That is what it meant to you? A Yes.

[fol. 551] Q As soon as it was said? A After I studied it over, it did.

Q Did he ever say anything like that, that is what he wanted you to do or say that is what he wanted the people to do there? A He did not personally look right at me and say he wanted me to do it.

Q Did he single out anybody in the room? A Everybody in the room I guess heard it.

Q Did he say: "This is what we want you to do?" A No, he didn't say nothing like that.

Q But, you concluded that, without benefit of a dis-

cussion with anybody else, that that is what he wanted you to do; that he wanted you to put nails in the parking lot and glass, break glass in the parking lot? A That is what I took it to me, from what he said, I took him to mean that by it.

Q That is what it meant to you? A That is the way I took it. I don't know how the rest of the guys took it.

[fol. 555] Q (By Mr. Baker) Did you tell Herbert that you went to that Union meeting? A Yes, I told him I went to the meeting.

Q Did you tell him what the union man said? A No, sir.

[fol. 563] LE ROY HUTCHISON, JR.

was called as a witness by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JENKINS:

Q Please state your name? A Le Roy Hutchison, Jr.

Q How long have you worked at Gissel Packing Company? A Thirteen years.

[fol. 564] Q What is your job there? A I am a sausage maker's helper.

Q Sausage maker's helper? A Yes, sir.

Q You do—do you do any of the direct work yourself or do you spend any portion of your time telling someone else what to do? A I do my own work.

Q There has been a testimony in this case that sometime earlier this year, and before a union meeting that was held down at the Governor Cabell Hotel in April, that there was a conversation that took place between you and Charles Gissel about that meeting.

I will ask you this.

Do you have any recollection or do you remember any conversation between you and Charles Gissel about a meet-

ing, a union meeting, down at the Governor Cabell Hotel before this meeting actually occurred?

Do you remember him talking to you about that meeting at all? A No, sir.

Q Did Charles Gissel ever tell you before the meeting in April that he was going to have somebody at that meeting who was going to call in or report who was there; [fol. 565] did he ever make that statement to you? A No, sir.

Q The week following this union meeting down at the Governor Cabell Hotel, did Wetzel Bailey ever make a statement to you about things that the union organizers stated to the employees at that meeting? A He told me something that happened at other places.

* * *

[fol. 573]

CHARLES GISSEL

having been recalled as a witness by and on behalf of the Respondent, and having been previously duly sworn, resumed the witness stand and testified further as follows:

REDIRECT EXAMINATION

BY MR. JENKINS:

Q You are the same Charles Gissel who testified earlier in this hearing? A Yes, sir.

Q Mr. Gissel, sometime in January of this year, did you get a telephone call from a Sherwood Spencer, who is an organizer for the Food Store Union? A There was a man who called by that name, he told me he was Sherwood Spencer, and not knowing the man, I just would not answer him.

MR. BAKER: You would not answer him?

[fol. 574] THE WITNESS: I answered him and when he told me he was Sherwood Spencer and wanted to talk about the Union, I refused to answer him, I refused to answer his questions.

Q (By Mr. Jenkins) After that conversation, he wrote you a letter that has been introduced here in evidence, did he not? A Yes.

Q Well, Mr. Gissel, did you have any knowledge or

information, as to whether or not, at the time you had this letter from Mr. Spencer, his Union, in fact, did represent a majority of the employees in your plant in an appropriate bargaining unit? A I never heard of a Union campaign until after he called me.

Q Well, have you had any previous dealings with this Union in years earlier? A I believe it was back in 1961.

Q At the time of that situation back in 1961, did, at that time, Mr. Spencer make any representations to you as to whether he did or did not represent a majority of the employees in the appropriate unit? A I do not know if it was Mr. Spencer but this Union said they represented a majority of employees.

[fol. 575] Q There was an election held? A Yes.

Q Did they, in fact, represent a majority of the employees? A No.

Q Now, after you got this phone call and this first letter from Mr. Spencer here in 1965, what did you decide to do with respect to whether or not the Union really represented a majority of these employees, if anything? A We talked it over among ourselves and decided that maybe they might not have a majority because the other time he did not; he did not the time before.

They lost the election.

Q They lost the election? A Yes.

Q Did Mr. Spencer agree to have a free and fair election of these employees down here? A No.

Q Now, the fact that he refused to have an election, did you draw any conclusions from that?

MR. BAKER: We object.

TRIAL EXAMINER: You can make any argument you want on that.

Q (By Mr. Jenkins) What did that mean to you?

MR. BAKER: Objection.

TRIAL EXAMINER: Overruled.

[fol. 576] You may answer.

Q (By Mr. Jenkins) Go ahead and answer the question. A If he did not want to have an election, it seemed to us like he didn't have the majority.

Q If he represented, if his Union really represented a majority, the employees down there in an honest elec-

tion, were you willing to recognize them? A I suppose we would have had to.

MR. BAKER: The question is, if the Union had won the election, would you have recognized them?

THE WITNESS: Yes.

TRIAL EXAMINER: That is what the question was, that is what I understood the question to be.

Q (By Mr. Jenkins) Well, at any time subsequent to that original demand, did Mr. Spencer ever agree to let these employees vote in a Board conducted election? A No, he just wrote those letters, those two letters that I received from him.

Q Those are the ones that have been introduced here as exhibits? A Yes.

Q Other than those, you have never had any contact with him yourself, is that right? A No.

[fol. 577] Q So far as you know, no one at your company has ever had any dealings with Spencer? A No, I never met him until the day we had the first trial.

Q Now, I want to ask you some questions—you have been here at the hearing—and I would like to ask you some questions with respect to some testimony that has been given at this hearing.

There was testimony at this hearing by a witness named Mounts that, back in April of 1963, you made a statement:

"If you talk to a Union representative, you will be fired."

Did you ever say that to Mounts? A In 1963?

Q That is what my understanding of it is.

Let me put it this way.

Did you tell him in April of 1963 or at any other time, did you ever tell Mounts that if he talked to a Union representative, you would fire him? A You are talking about two years ago. I never told any employee that.

Q You never told any employee anything like that? A No, we had had trouble at one time. I knew better than that.

[fol. 578] Q Now, in September of 1964, Mounts testified in substance that you said to him:

"If you are caught talking about the Union, you will be fired. If we have a Union, I will pack up my things and go."

He says this was when some Buckeye loading van was up there in the plant.

Do you remember any such conversation with him about that? A No.

Q Now, there was further testimony that about February or March of this year, you had a conversation with one of your cattle haulers in front of the plant within the hearing of Mr. Mounts and said:

"I can shut down the slaughter house and do away with the men."

Do you remember any conversation at that time and place? A There was a conversation but he twisted the words.

Q What was actually said? A I was talking to my cattle buyer and—

Q Who is your cattle buyer? A Ernest Lang.

Q All right. A We were talking about hauling dressed hogs from Greenfield which is one hundred and [fol. 579] twenty-three miles from here we could kill more cattle and haul dressed hogs in by freight and use the same crew in the cattle kill and use the same crew in the slaughter house, because we were not killing enough cattle.

Q Did this have anything to do with the Labor Union? A No, I was not talking about a Labor Union or nothing.

We were talking about the men hauling the cattle into here.

That is what the conversation was about; not about the Labor Unions.

Q The idea of doing business this way by making these purchases over in Ohio how long had that been under consideration by your company? A I believe Jack Collins came to us approximately about four or five years ago.

Q And he brought this subject up to you at that time? A Yes.

Q Now, there is a further conversation that in March of 1965, out front, which I presume means out in front of the plant, you had a conversation with Rush Moore and a Ken Adkins may have been there and the testimony of Mr. Mounts was that you asked Rush Moore to find out about the Union and report back to you.

Did you ever make that statement to Mr. Moore? A Let me put it this way.

During the time we had this Union trouble or however [fol. 580] you want to put it, a Government man who handled the election came to us and cautioned us not to comment, not to mention the Union at all.

He said when any of the employees mentioned Union, not to say anything.

When any employees did mention the Union, I walked away.

Q This was back in what year? A 1961, I believe.

Q All right. A We made a mistake that year of talking against the Union. This time, we did not, we knew better.

Q Were you personally involved in it at that time? A No.

Q You were not personally involved? A No.

Q Did you follow that advice this time? A Yes, we sure did.

Q As a matter of fact, Mr. Gissel, did you consult with me in January, after you had received this letter and a phone call from Spencer? A I called you the minute he called me.

Q I will ask you whether or not I told you at that time that it was a method of this Union in their operation to put people in the plant to make statements and misquote you; did I not warn you against this even [fol. 581] tuality?

MR. BAKER: Now, I move that that not only be stricken but that it be stricken physically from the record.

The reason for that is that if the Counsel wants to personally malign the Union, he may do so, that is his prerogative.

But, I do not think this is the proper place to do it.

TRIAL EXAMINER: Well, this certainly will be contested.

MR. BAKER: It is a leading question also.

MR. JENKINS: I realize it is a leading question.

TRIAL EXAMINER: Well, rephrase your question and if you want to ask him what you said to him, he may answer it that way.

MR. JENKINS: Yes, Your Honor.

Q (By Mr. Jenkins) What was said to you at that time as to the mode of operation of the Union and what you should do about it?

MR. BAKER: Now, I will object to this question.

What difference does it make what Counsel tells him? What value does that have in this record?

TRIAL EXAMINER: I do not know that this is offered to prove that the Union in fact operated this way.

This—is it offered to prove that the Union in fact operated in this manner?

MR. JENKINS: Your Honor, it goes to show the basis upon which he acted during the period in which General Counsel is bringing these charges.

TRIAL EXAMINER: Well, if you are getting it in for background, I will receive it for that; I will not receive it for the truth of a statement or any of the statements contained.

What did he tell you?

THE WITNESS: Jack told us to keep our mouths shut about the Union and not say anything about it and to watch the men coming in because the Union usually put men in to make trouble.

I also talked to Mr. Logan about it, about the things that were happening to us and he told us the same thing; he said to watch how—all the men coming in and not to say anything about the Union. He said not to let them make me mad.

Q (By Mr. Jenkins) In April of 1965, there was testimony here by Mounts that you talked to Charles Hutchinson about a Union meeting to be held on April 17, and that you made the statement to Charles Hutchinson:

"Yes, that you would have someone there to call in and to check and to see who was there."

[fol. 583] Did you make that statement? A No, sir, because the Government man told us better than that.

Q Did you or anybody in your company send any representative to that Union meeting? A No.

Q Now, on April 19, it would have been on Monday following the Union meeting on Saturday, do you have any recollection of a conversation in the parking lot near your automobile between you and Frye and Mount? A No, sir.

MR. BAKER: The answer was "No, sir?"

MR. JENKINS: That is right.

THE WITNESS: That is right.

Q (By Mr. Jenkins) Now, in the week of April 19, who set up the schedule for the men working at that time in the shipping room and in the plant where Mounts and Frye were working? A I did.

I do that.

Q Now, could you explain to the Trial Examiner what the situation was at that time with respect to the amount of work and the problems you had of scheduling your people? A Well, business had been bad for six months or better. We were laying off some of them on Friday evenings and some on Mondays, some we were letting off full days.

[fol. 584] We worked all day on Wednesday and Thursday.

Q Can I interrupt you? A Yes, sir.

Q Why was it that Wednesday and Thursday were busy days? A These are the days we load all the trucks and these is the days the customers wanted the stuff.

We could not get it all on, we could not get the boys organized like that, and I figured I would let some come in the mornings on Mondays and Tuesdays, Monday and Tuesday mornings, and some come in on Monday and Tuesday evenings and then some would come on Friday and we would lay off on Friday evenings.

Q What was the purpose of letting people work part time? A Well mostly to give them more even time be-

cause the way we are working, some were getting more time than others.

Q Now, starting—Strike that.

One the week of April 19, 1965, what was Mounts' and Frye's working schedule for that week? A 5:30 in the morning on Monday and Tuesdays and until noon, and all day Wednesday and all day Thursday and a half day Friday from 5:30 until 11:30.

Then, on Saturday, from 6 to whenever we got done around 10:00 or 11:00 o'clock.

Q Now, were there other employees who were working the same schedule? A Bernard Simon came out at [fol. 585] 5:30 and Eddie Lewis, twice a week, he came out at 5:30. Maynard came out noon and worked in the evening. He came out Wednesday morning at 5:30 and worked all day until we got done. Thursday he would come out at 5:30 and work until we got through.

Q Now, at any time, did Mounts and Frye ever make any objection or did any of these other people make any objection to this time schedule? A No.

TRIAL EXAMINER: What was this week?

THE WITNESS: April 19.

Q (By Mr. Jenkins) Now, had you been working on this schedule for some time before that or not? A We had been working on it for two weeks.

Q Before April 19? A Yes, sir.

Q Now, had Mounts and Frye been told or had they not been told as to their hours of work on Wednesday and Thursdays? A Right.

Q They had been told? A Right.

Q Now, when is the first time that you knew that they had disappeared from the plant around noon on [fol. 586] Wednesday, the week of April 19, that week? A About 1:00 o'clock.

Q And how did you find this out? A I came into the shipping room and they were not there so I asked questions. The boys told me they had not come back.

Q Did you talk to anybody particularly in there? A I just asked different ones and nobody knew, but then Eddie Lewis told me that Red had told him that the day before he had made twenty dollars on Tuesday evening working for his father-in-law.

Q What did you do then, if anything? A I piddled around a half hour filling orders and then I got to studying and I knew his father-in-law's name so I called his father-in-law and he told us that they were working for him.

I told these four men to go over there and to find out if they were working.

So, they did.

Q Why did you send four men? A For witnesses.

Q You wanted to be sure? A Absolutely.

Q This was not your first trouble with Mounts, was it? A No.

[fol. 587] Q Well, when you found out about 1:00 o'clock when you came in there that they were gone from their work stations, will you state whether or not you were surprised or not? A Yes, I was.

MR. BAKER: He was what?

TRIAL EXAMINER: Surprised.

MR. BAKER: Surprised about what?

TRIAL EXAMINER: You mean, surprised at their not showing up?

THE WITNESS: Because they never did that before.

TRIAL EXAMINER: What?

THE WITNESS: They had never pulled a trick like that before.

Q (By Mr. Jenkins) Had you ever told them that they were only to work until 11:30 in the morning until further notice? A No.

Q Now, did you subsequently, I believe it is undisputed, receive a report that they were working on another job? A Right.

Q Do you know whether or not this was the same job Mounts was working on when he did not show up for two days after his vacation was over? A I don't know about that. He told some of the boys that he was working [fol. 588] ing on his own home, until two days after his vacation was over.

Q Now, what happened then on Thursday following the day that Mount and Frye did not work on Wednesday afternoon? A They came in about twenty minutes

until 6:00 and wanted to know where their time cards were.

Q Was this on time for work? A No, sir, they were late.

Q What time were they supposed to be there? A 5:30.

Q What did you say, if anything? A I told them I figured they had quit and were not working for me anymore.

Q Now, what did they say when you told them you figured they had quit? A Well, they tried to tell me they did not and they got mad.

They said they would see me in court.

Q They would see you where? A They said they would see me in court.

[fol. 589] Q What happened next, if anything? A They went out storming, I guess they threw a fit, I don't know, they went outside and some of the boys in the shipping room saw them.

Q Did they then leave the plant? A No, they stood around three or four more minutes arguing and raising Cain.

Q Then they left? A Yes.

Q That is the last time they were at the plant as far as you know? A Until they came back for their checks.

Q Now, there has been testimony here that that morning, you made some statement to them that they could:

"Take the damn union and stick it"

Or, something like that.

Did you make any statement that you recall to them like that on that occasion? A No, sir.

I knew that is what they wanted me to say so I would not say it.

[fol. 590] Q (By Mr. Jenkins) * * * You testified a moment ago, Mr. Gissel, that the company down there had had other problems with this fellow Mounts right along. A Yes, right.

Q Would you tell the Trial Examiner if you can exactly the problems you were then having with this man.

after the or in the last couple of months there before he finally quit? A In February, right after Spencer called, he was boning hams in the basement and the temperature down there is only forty degrees and his job is to clean it up after he gets through and take the trimmings up in the cold cooler, another cooler.

He left them down there three times. My brother Herbert wanted to fire him and I told him not to.

I told him not to fire him.

Q Why? A Well, I figured he wanted an excuse to get us in trouble with the union.

So, I would not let him fire him.

[fol. 591] Q All right. A Then, on Friday I told him and Elmer Maynard to bone hams and be out by 11:30. I went down at 11:30—I mean, I went down at 11:20 and he was still boning hams and he worked for another two and a half hours there.)

So, I just got mad and fired him. So, my sister talked me into hiring him back.

Q And what was the reason for that? A The same reason; we were afraid of the union.

Q All right. A So, we hired him back again.

Q You put up with him again? A Yes.

MR. BAKER: I object to the remarks of Counsel.

I object to the comments of Counsel to his own witness. It is leading and suggestive and I object to it.

TRIAL EXAMINER: It will be decided on the weight.

Q (By Mr. Jenkins) Go ahead. A He came in late and he was never on time and I expect from November until the day he quit, he was on time only five or six times.

He was always late from five minutes to forty-five minutes to an hour.

Q Did he ever call in with an excuse for being late? A No, he never called in with an excuse.

[fol. 592] Q Did you in fact ever write him a letter about this trying to get him to change his ways? A No, but in front of witnesses, I told him I was tired of it and couldn't put up with it any longer; I told him this five or six times.

Q Did he make any response to your request? A No, he never said a word.

He just kept right on doing it.

Q Well, back as early as February 19, I will ask you if Mrs. Closterman at your office wrote him a letter telling—or, calling his attention to the fact that he was always late?

(Handing document.)

A (Examining document.)

Yes, she wrote that.

She wrote that letter.

Q Did you—Strike that.

This letter, I believe, is in evidence as Respondent's Exhibit No. 1? A She did—Yes, sir, it is.

Q Did you have any discussion with Mrs. Closterman before this letter was written? A No.

Q Now, what other troubles did you have with Mounts during this period? A Well, he wouldn't go back and help the boys shake hides on the Monday we were in Charleston.

[fol. 593] Q Had he done this before? A They were not shaking, they were loading boxcars.

Q But, now he refused? A Yes, four of them told Eddie on Saturday, the Friday or Saturday before, that they were going to refuse to work, refuse to do it, if they were asked to do it, and they said they would quit.

Q Mounts and Frye? A Yes, and Maynard and Ken Adkins.

Q Did you decide to fire them then? A I started to and I thought, I talked to you, and you said not to and I decided to let it go for a while.

Q I told you not to fire them, did I not, that the union would claim he was—or, that it was for union activity, did I not? A Right.

Q You asked me how long you had to put up with this, did you not? A Yes, and you told me to take it as long as I could.

Q So you did? A That is right.

Q Then what happened?

MR. BAKER: I am going to object to this.
[fol. 594] Counsel is making this record for the Court of Appeals, that is obvious, and I do not think the Court of Appeals is entitled to anymore illegitimate evidence than the Trial Examiner is.

As far as I am concerned, this is not evidence.

TRIAL EXAMINER: It is true that Mr. Jenkins is making statements and the witness is agreeing with them.

MR. BAKER: Maybe the Trial Examiner can weigh that evidence.

But, sometimes when it is in black and white before a higher Court, the statements at that time may be given more weight than is justified.

TRIAL EXAMINER: Well, I will give them the weight to which they are entitled, I request you do not lead the witness.

Q (By Mr. Jenkins) Did you have any problems with Mounts about returning from vacation when he was supposed to? **A** He was supposed to get back on Monday and he did not show up until a Wednesday.

Q Did he send any notice into the plant? **A** He sure didn't.

Q Was any effort made to locate him when he did not show up when he was supposed to? **A** Yes, I told Jerry Frye to, Jerry was one of his friends; I told Jerry to get hold of him and that I wanted to know what was the matter with him.

[fol. 595] **Q** Did he have any excuse when he came back to you? **A** No.

Q Was there any understanding down there that if a fellow wanted to go off and work on his house when he was supposed to be at work, or do work for somebody else for more money, that he has a right to do that? **A** No, of course not.

Q Do you deal in perishable commodities down there? **A** Right.

Q Did you have any trouble with Mounts about his vehicle, his truck? **A** The only one was when he blew the motor when he was running a truck on the turnpike and he blew the motor out of it.

Q Now, when Mounts finally, and Frye walked off of the job on Wednesday during a busy day, did they give you any notice that they were leaving that Wednesday in April there when they did not show up for work that afternoon? A No, they did not.

Q There was testimony in this case that when they left before lunch, they walked right by you and left in your sight or presence?

Did you see them leave? Or, did you know they were [fol. 596] leaving? A I saw them walk to their car with their lunch.

They always ate their lunch in the car.

Q Did you have any reason to believe from that that they were not going to return to the regular job at the regular time of work? A No.

Q Now, there has been testimony from a man by the name of Jerry Frye, that on Thursday before April 17, that you said there would be somebody at a union meeting watching.

Did you make that statement? A No.

Q Did you send anybody to the union meeting to watch anybody? A No.

Q I will ask you whether or not, on April 18, or April 19, which was Monday, after the union meeting, did you make the statement to either Frye or Mounts or direct a question rather:

"Did you go to the union meeting," and then make the further statement to them that "I know that you did go to the meeting."

Did you make that statement? A No.

Q Did you have any conversation on that Monday with Frye or Mounts about their going to the union meeting and that you were changing their work schedule or anything like that? A No, sir.

[fol. 597] Q In fact, there was—In fact, their work schedule was not changed, was it? A No.

TRIAL EXAMINER: Had they been working from 5:30 to 11:30 the previous week?

THE WITNESS: They were coming in at 5:30 on Mondays and some other days, we would bring them in at 5:30.

TRIAL EXAMINER: Until when?

THE WITNESS: Until noon.

Then, every Wednesday, they would come in at 5:30, we would bring in three boys to try to get the trucks loaded, trying to get the trucks out of there at 6:00 o'clock.

TRIAL EXAMINER: Yes, but before this final week or at least one week or more prior to that, they had been working from 5:30 a.m. to 11:30 on certain days?

THE WITNESS: Yes, ma'am, on just certain—one or two days a week; we had not set it up completely at that time.

MR. BAKER: Is it the testimony of the witness that the rest of the plant did not work in the afternoon?

THE WITNESS: What day?

MR. BAKER: On any day before April 19?

TRIAL EXAMINER: Before that Monday after the union meeting?

[fol. 598] **THE WITNESS:** Yes, they went home at noon.

TRIAL EXAMINER: They went home at noon?

THE WITNESS: They sure did.

TRIAL EXAMINER: Now, the previous week they had been doing the same thing on Monday, Tuesday and Friday?

THE WITNESS: Tuesdays, yes, they went on home on Tuesdays and Friday of the prior week.

On Mondays, we hadn't changed Monday yet.

Q (By Mr. Jenkins) Back in September of 1964, Frye testified that in the office you asked him if anyone had asked him about the union and made the statement something to the effect that you would fire him if he had anything to do with the union.

Did you ever make any such statement to Frye back in September of 1964?

THE WITNESS: Why should I, Your Honor, there was no union campaign going on back then.

TRIAL EXAMINER: Answer the question.

Q (By Mr. Jenkins) Would you answer my question?

A Well, like I said, there was no union campaign going on back then.

Q Then you did not have any conversation with him like that? A No.

Q Now, Frye testified that about February 10, at the garage you asked Rush if he knew anything about the [fol. 599] union, you asked him if he knew anything about Don Kidd and made the statement that if Kidd was found out to be the ringleader of the union, that he would be fired.

Did you ever have any such conversation with Rush? A No, I would not have made—no, I would not have mentioned the union there.

Q Now, on this same day, Frye testified that in the afternoon that you asked him if he knew anything about the union and asked him what they were offering him and that you could offer him more than they could.

Do you remember any such conversation as that? A No, sir, I do not. That Government man had told us better than that.

Q Now, there was a witness named Tommy Burchell who testified in substance that in February, about a week after he started working on the second floor of the plant down there, that you asked him where he knew Red Mounts from and that you told him to stay away from him, meaning Red Mounts, because he could cause him trouble.

Do you remember that conversation? A He didn't come to work in February and there was no such conversation as that because I knew who he was and how he knew Red.

Q All right, sir.

Did you ever have any conversation with Burchell about [fol. 600] Mounts? A No.

Q Burchell also testified that in April, in the sausage room, that he—that is Burchell—and a fellow by the name of Lawrence Hysell were talking and that you went up to Burchell and asked Burchell if Hysell was talking to him about going to a union meeting or signing up.

Did you have any such conversation as that? A No, I went to Red that day when he was talking to Hysell and I told him he had no business in the sausage room; he was working in the shipping room.

Q Was there any discussion about a union meeting?

A No.

Q Now, there has been some testimony here by a fellow, an employee, by the name of Elmer Maynard that about February 18 or sometime in February, that you made the statement to him that you did not give a damn about the union.

Do you remember making any such statement as that?

A No, sir.

Q There was testimony here by this fellow Maynard that as far as giving instructions to Mounts back in February about his work assignment, namely, putting hams in cans before noon, that you gave him these instructions to Maynard and not Mounts?

What happened? A I would not give them to Maynard [fol. 601] because Maynard was a new man.

Mounts was in charge of the hams.

It was his job to see that it was done.

He was teaching Maynard and I gave the instructions to Mounts.

Q Who did you give the instructions to? A To Mounts.

TRIAL EXAMINER: When did Mounts come with the company; I do not believe the record shows that?

Could you give us that information?

Q (By Mr. Jenkins) Do you remember when Mounts came with the company? A I believe it was about a year and a half.

Q I believe Mounts said about two years, as I recall; I am not real sure. A I believe it was about a year and a half.

Q A fellow by the name of Elisha Watts testified that on one Saturday morning, he remembered you making a statement to this effect:

"To hell with the union. I am going to give it to the union."

Do you remember any such statement as that? A No.

Why would I give it to the union; I have money in that plant.

[fol. 602] Q Did you ever make a statement to Kenneth Adkins in about February of 1965 that if the union got in you were going to take your money and leave? A When was that?

Q In February of 1965? Did you make any such statement to Kenneth Adkins? A That I was going to take my money and leave?

Q Yes. A No, sir.

Q Did you have any knowledge or any reason to believe that this labor union was active or doing anything about organizing the company there prior to the time that you heard from Spencer in February? A No, because the union had not been mentioned.

Q Did you have any problems with Jerry Frye with respect to the performance of his duties, how he handled the meat? A He came in late all the time, he rode with Mounts, and he came in late all the time and I told him one time that he better get another way in so he could be on time.

He could read a bill as well as I could and he would come to the office there for me to read the bill for him.

He would not pack the meat good in the boxes and he would not put the paper in them and sometimes he would stack them on the flat truck and leave them on the trucks, then the load would spoil.

[fol. 603] Q Did you have any trouble with him in February about the handling of the boiled hams or anything of that sort? A No, I don't think Jerry had anything to do with that, it—well, he had never worked on them.

Q Did you have any unusual incidents down at the plant beginning in say the first of February or in January after you heard from Spencer, have you had any unusual incidents happen down there? A Well, we lost four trucks, four truck motors, in about six week's time. Someone left the cooler open and they cut up six carcasses of beef and we lost about twelve hundred dollars; little things like that.

Q When you asked Mounts and Frye to report for work on time, what did they do, if anything? A Well, they never did do it.

Maybe one day they would and then it would start all over again.

[fol. 604] Q Now, when you were determining whether or not to recognize the Union after you heard from Spencer in January of this year, will you state what, if anything, you determined with respect to your peddle drivers? A The peddle drivers are on a salary and commission; they are salesmen and we do not figure salesmen should be in the Union.

Q Was Mr. Spencer insisting or was he not insisting that these peddle drivers, these driver salesmen, be in the Units? A Right.

Q These peddle drivers, how are they paid? A They are paid so much a week base salary and then a commission.

Q How are the other employees down there paid? A Hourly.

Q Do these peddle drivers work with the other employees? A No, the only thing they do is we bring the stuff out and put it on their trucks.

They watch us load it or sometimes they will help us load it on the trucks to see that it is properly located.

Q Do these peddle drivers work inside the plant? A No, sir.

Q Do they spend their lunch hour socializing with the other employees of the plant? A No, sir, they are not around the plant.

[fol. 605] MR. BAKER: Did the witness say that Mr. Spencer was insisting on the inclusion of these peddle drivers in the unit?

Did I hear his answer correctly?

TRIAL EXAMINER: Yes, that was the answer of the witness, that Mr. Spencer was insisting that upon the inclusion of the peddle drivers; that was the question and the witness said yes.

MR. BAKER: We will object to the witness testifying with regard to any conversations he had with Mr. Spencer in that connection.

MR. JENKINS: Well, it is reflected in the correspondence. It is reflected in the letter; he said truck drivers.

MR. BAKER: Well, the letter is the best evidence.

TRIAL EXAMINER: Well, I think he was talking about the correspondence that are in evidence; the letter that is in evidence.

MR. BAKER: Well, I think the testimony should be stricken because the best evidence of what Mr. Spencer was insisting upon is contained in the letter which is in evidence.

TRIAL EXAMINER: It may remain.

MR. JENKINS: I would like to see the exhibits, please.

TRIAL EXAMINER: Yes, of course you may.

[fol. 606] (Handing document.)

Q (By Mr. Jenkins) Now, do these peddle drivers have a supervisor and who is that? **A** Cliff Carley.

Q Do these peddle drivers, do they work on a schedule like the people in the plant? **A** No, they leave when their truck is finished, they leave and when they get finished, they come in.

Q For example, who determines when they take a break or a lunch period or anything like that? **A** I suppose they determine it themselves.

They are out on the road and you can't see them.

Q What is Mr. Carley's title? **A** I suppose sales supervisor.

RECROSS-EXAMINATION

BY MR. BAKER:

[fol. 607] **Q** Well, what did you mean when you said [fol. 608] that Mr. Spencer was insisting on the peddlers being in the unit? **A** Well, he asked me if he was insisting on, or if he wanted the truck drivers and peddlers, peddler drivers in the same unit as the rest of the plant. He called them truck drivers and he also called them peddler drivers and he also called them salesmen, and we call them truck salesmen.

Q Did he ever once mention anything in the letter about the truck driver salesmen or driver salesmen? **A** He called them truck drivers. We figured he meant ped-

dlers because we call them peddlers, truck drivers and salesmen.

[fol. 609] Q Now, the Board says truck drivers, truck driver salesmen; they have two words in there; there are two classifications?

MR. JENKINS: I object, what difference does it make what the Board said about it back in 1961?

MR. BAKER: I am just trying to see; this witness has testified to the fact that Mr. Spencer was insisting on these peddlers and there was nothing in here concerning that and—

THE WITNESS: I am trying to explain to you that we call them truck drivers, peddlers, salesmen and peddler salesmen; we have four names for them.

TRIAL EXAMINER: Did you say that you had some drivers who are not salesmen?

THE WITNESS: Yes, ma'am.

[fol. 611] You say that Elmer Maynard came in on Wednesday morning and worked? A He came in on Monday—on the 19th, on the week of the 19th, is that when you are talking about?

Q This week now that you told Frye and Mounts to start coming in at 5:30 and work until 11:30? A They came in every Wednesday at 5:30 or they were supposed to.

Q You mean that week Elmer came in— A Elmer was supposed to come in on Wednesday at 5:30.

Q But he did not, did he? A He did, yes.

He might have testified at this hearing that he did not, but I can get his time card and show you.

I can show you that he came in at 5:30.

Q I said, he did not come in until Thursday; but, after you discharged Mount and Frye, you told him to start coming back in at 6:00 in the morning on Wednesday; that is his testimony? A I don't care what his testimony is. I can get his time card and show you. The time card will show that he came in at 5:30.

[fol. 612] Q On the 21st? A On the 21st, Wednesday.

Q Do you have that time-card with you? A No, sir, it is at the plant.

Q Now, you say that you told Frye and Mounts when to come in, when did you tell them?

Had you posed a schedule telling them to come in from 5:30 until 11:30? A I didn't post a schedule, I tell my men.

I don't post a schedule.

Q When did you tell them about this 5:30 to 11:30 on Monday and Tuesday and then on Wednesday, they would come in at 5:30 and work all day?

We are talking about the Wednesday that you canned them? A Well, I did not can them, they quit.

TRIAL EXAMINER: This is the critical week; he calls it one thing and you call it another.

THE WITNESS: I told them on Monday morning to start coming in at 5:30 and to work until 11:30 and also to come in at 5:30 and work until 11:30 on Tuesday.

Then, on Wednesday and Thursdays they would come in at 5:30 and work all day on Wednesday and all day on Thursday and then, they would work a half day on Friday. On Saturday, they would come in at 6:00 o'clock and work until whenever we got through, probably around [fol. 613] 10:00 o'clock or 11:00 o'clock.

Q (By Mr. Baker) What was the first day you told them about this new schedule, if you know? A Every Friday, we were laying off at noon every Friday and I would send them home on Tuesday and sometimes on Monday; but, never on Wednesday or Thursday.

Q You say you called Mr. Logan? A I did not say I called Mr. Logan.

Q I believe you did? A I don't believe I did; I said I talked to him.

Q You talked to him about the Union? A We were talking business and he asked me if Sherwood had called me.

Q This was after Sherwood had called you? A It was after he called me, it was about three or four weeks after he called me.

Q You knew about last September there was an organizational campaign going on in the Logan plant? A I think it started before September; I think his trial was before September.

It was last summer sometime in June or July.

Q What this conversation you had with Spencer; do you remember what Spencer said? A Spencer called up and said:

[fol. 614] "My name is Spencer; do you know me?"

I said, "I do."

I have a customer in the west end called Spencer's Market. He said he knew of that.

He said, "I represent a majority of your employees in a bargaining unit."

I said, "You will have to talk to my lawyer."

I gave him the name of Mr. Greene and I told him that I would give him the name of the others later; that we had five lawyers.

Q Did you ever give them to him? A No, I gave him the name of Greene and Jack Jenkins.

* * *

[fol. 615] HERBERT G. GISSEL

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JENKINS:

Q What is your name? A Herbert G. Gissel.

Q What is your connection with the Gissel Packing Company, Incorporated? A I am a sausage maker in the sausage room and I am Vice-President.

Q How long have you been connected with the company? A All my life, about thirty years.

Q Mr. Gissel, in the Complaint, the first Complaint that was filed in this matter, there is an allegation in here that says that during the first week of February,

1965, the Regional Director does not know the date, that you accused some employee down there of being the instigator of the Union campaign and that you threatened some employee that the Respondent, that is, your company, would prevent the Union campaign from being successful.

[fol 616] Did you ever make any such statement as that? A I did not.

Q Mr. Gissel, there was testimony in this case from a man by the name of Elisha Watts to the effect that sometime you made the statement to him, that:

"I don't want to hear no more about this Union stuff. If you can't do your job, get out."

Do you remember any such conversation? A No, sir, I never talked about the Union in the plant.

Q Well, this man Elisha Watts, tell the Trial Examiner about his temperment and describe his general conduct? A Well—

MR. BAKER: I object to his temperment, it is—a description of his temperment.

Of what purpose is this going in. He is not a psychologist or a psychiatrist or anything like that.

I do not see the relevance.

MR. JENKINS: Well, Your Honor, the purpose of this is one of the witnesses this morning testified that he had a conversation with this man that he was afraid of him.

I think it would be helpful if you had the background, to understand why the witness was afraid of him by reason of his temperment and disposition.

TRIAL EXAMINER: Was Mr. Watts a witness?

MR. JENKINS: I don't believe so.

[fol 617] MR. BAKER: Well, if there is anything regarding his temperment, it ought to come from the witness, not from someone else.

TRIAL EXAMINER: Well, you could get it through any incidents that might have happened.

Q (By Mr. Jenkins) Well, tell us anything you know, about any incidents that have happened? A Incidents he had with me?

Q Yes. A Well, I asked him—I am over the bacon department—and he was cutting hogs and trimming the bacon and leaving the back fat in the hogs; when you slice this bacon it just smears all over. I asked him to get it out.

So, he started taking it out and I come back the next day and he was still taking it out and then I checked back a little later and he was leaving it in.

I got back on him again. He said, "I can't do three jobs at once."

I asked him who else's job he was doing. He didn't answer me.

I said, "You are not doing the boning?"

He said, "No."

I said, "Then, you are not doing three men's work, you can't be doing three men's work."

It went on until he got over on the other side of the room and then the argument kept on and he had a meat [fol. 618] cleaver in one hand and a knife in the other. He wanted me to hit him.

He actually wanted me to hit him.

He told me that I was on his back.

So, I told him I was not on his back.

He actually still wanted me to hit him, so I walked out.

He has always got everybody in an uproar, he was always talking from one side of the room to the other. He keeps everybody stirred up.

Q Is this well known around the plant there? A It is well known.

Since he has left, it is quiet.

MR. BAKER: I move that be stricken, there is no basis for that testimony.

He wanted him to hit him, he said, he had a knife and a cleaver, he is working in a butcher's shop.

He uses his knife and cleaver in his work.

TRIAL EXAMINER: This will be taken into consideration in weighing the evidence.

Q (By Mr. Jenkins) Was he threatening you with these instruments? A He threatened to cut me.

MR. BAKER: He threatened to do what?

THE WITNESS: He threatened to cut me.

[fol. 619] TRIAL EXAMINER: What did he say?

THE WITNESS: He threatened to cut me.

TRIAL EXAMINER: What did Mr. Watts say?

THE WITNESS: Well, he was going to cut me.

Q (By Mr. Jenkins) What did Mr. Watts actually say to you? A He wanted me to hit him I said, "I know better than that."

He threatened to cut me.

TRIAL EXAMINER: What did he say, did he say "I want you to hit me?"

THE WITNESS: Yes, he wanted me to hit him, he said, "Hit me."

[fol. 620] Q (By Mr. Jenkins) Did you have any difficulties with Jerry Frye in 1965 in performing his work in your department? A Who is Jerry Frye?

Do you mean "Bruiser?"

Q Yes. A Yes, he was putting hams in the sausage room in the pans and putting lids on under pressure.

The meat comes out from under the lid and they always trim it off.

That is a ruined part of the ham and at that time, hams were selling for eighty cents a pound.

I didn't pay too much attention to it. I went out and saw this all laying on the floor and there was about four pounds of it laying on the floor.

So, I went back in and got Bruiser and Pork Chops—

Q Now, you are going to have to identify who "Pork Chops" is? A I don't know their names.

Q Who is Pork Chops? A I don't know their names, I said.

Q Well, is "Pork Chops" in, is he a man by the name of Maynard? A Yes.

Q Now, just so we have it clear, Bruiser is a man by [fol. 621] the name of Jerry Frye? A Yes.

Q All right, sir.

TRIAL EXAMINER: Well, let me get it clear; Jerry Frye is Bruiser and Pork Chops is Maynard?

THE WITNESS: That is correct.

MR. JENKINS: That is correct, Your Honor.

TRIAL EXAMINER: All right, continue.

Q (By Mr. Jenkins) Go ahead. A So, I went in and I asked them, I said, "Now, I want to know, I want an answer from you boys and I want it quick. If you went home, would you take a slice of meat or a slice of bread and throw it in the floor."

They looked at me and I said, "I want that answer and I want it now."

So, Pork Chops said, "No, I would not."

And then I turned to Bruiser and asked him and he said, "I wouldn't."

I said, "What about that four or five pounds of meat you threw on the floor in the sausage room?"

They never done it before.

Q About what time did this happen, about what month, the date? A I cannot give you the exact date.

[fol. 622] TRIAL EXAMINER: Do you have any recollection of about what time it was?

THE WITNESS: It was about February 18, maybe around the 15th.

Q (By Mr. Jenkins) Of 1965? A 1965, yes.

So, they went out and got it and I said to them, "So, you want to join the union; your union would not back you up on that."

That is the only time I ever mentioned the union.

I just said that the union would not back them up on throwing that meat in the floor.

MR. JENKINS: You may inquire.

CROSS-EXAMINATION

BY MR. BAKER:

Q You say Watts was tempermental? A Yes.

Q Everybody was afraid of him? A I don't know whether everybody was afraid of him or not.

Q Were you afraid of him? A No.

Q Are you tempermental, Mr. Gissel? A Oh, I get mad.

Q Did you get kick a bologna around the plant? A Did I do what?

[fol. 623] Q Did you ever kick a bologna around the plant? A No.

Q You never did? A No.

Q As a matter of fact, they are all pretty loud down there, are they not, at the plant? A Oh, I don't know about that.

Q They all go about yelling and cursing? A Yes.

Q The Gissels too? A Yes, you are talking over machines down there, you know.

Q Doing what? A Talking over machines, the noise.

Q That is just sort of the modis operandi of the way you work, is it not?

Is not that pretty much true of all packing houses? A Oh, I don't know, I haven't been in all packing houses.

Q It is kind of a boisterous crew, is it not? A No.

Q But, the Gissel Packing Company is quite loud, is it not? A You can put it that way, if you want to.

[fol. 624] Q Now, Watts had that meat cleaver in his hands because he used it in his work, did he not? A When I was talking to him, he was out in the middle of the floor and then he went over and got it.

Q Do you think he was threatening you? A He said he would cut me.

Q Why did you not have him arrested? A Just because, why stir it up?

I have been cut twice.

Q At the plant? A No, when we were kids.

Q Actually, in a packing house probably there are some of the sharpest knives in the world used there, boning knives which are razor sharp? A Yes.

Q If people had a tendency to cut somebody, that would be an excellent opportunity? A It would be.

Q There are plenty of opportunities with people working there in close quarters wielding knives? A Yes.

Q Has it ever happened that Watts cut anybody? A No.

Q Nobody even thought he would cut anybody, did they? A I don't know what was in his mind.

[fol. 626]

ALFREDA CLOSTERMAN

was called as a witness by and on behalf of the Respondents and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION**BY MR. JENKINS:**

Q What is your name? A Alfreda Closterman.

Q What is your connection with the Gissel Packing Company? A I am Secretary-Treasurer.

Q How long have you had that job? A About thirty-one years.

MR. JENKINS: Your Honor I would like to have marked for identification as Respondent's Exhibit, these documents to be marked as Respondent's Exhibits 3, 4, 5, and 6.

TRIAL EXAMINER: They will be so identified.

(Whereupon, the documents above-referred to were marked Respondent's Exhibits Nos. 3, 4, 5 and 6 for identification.)

Q (By Mr. Jenkins) Mrs. Closterman, is there an employee of the Gissel Packing Company—

MR. BAKER: May we see those?

MR. JENKINS: Yes, of course.

MR. BAKER: (Examining documents.)

[fol. 627] Thank you.

Q (By Mr. Jenkins) Mrs. Closterman, is there an employee of the Gissel Packing Company by the name of Ralph Hysell? A Yes, there is.

Q I hand you here a document noted as Respondent's Exhibit No. 3 and I hand you the original, and one further copy of that exhibit I will give to Counsel for General Counsel, which is a photo copy of it, and I will ask you what that is?

(Handing document.) A (Examining document.)

It is an employees' withholding exemption certificate.

Q Does the name of Ralph Hysell appear on it?

A (Examining document.)

Yes, it does.

Q That is signed to that document? A Yes, it is.

Q Who placed it on the document? A Ralph Hysell himself.

MR. BAKER: Is Counsel—does Counsel intend to offer this document?

MR. JENKINS: Yes, I do.

MR. BAKER: For what purpose?

MR. JENKINS: We want to show that Mr. Hysell is [fol. 628] capable of signing his name.

I was indicated that he was not.

[fol. 629] Q (By Mr. Jenkins) Is this slip here, Respondent's Exhibit No. 3, is this the record of the company contained in the usual course of business and retained under your supervision and control? A Yes, as soon as they are hired.

MR. JENKINS: We move its admission into evidence.

TRIAL EXAMINER: Well, is Mr. Hysell present at the hearing?

MR. JENKINS: May I suggest, Your Honor, that you reserve your ruling on this and maybe I can connect it up later?

TRIAL EXAMINER: All right.

Q (By Mr. Jenkins) I hand you now Respondent's Exhibit No. 5, and give a copy of Respondent's Exhibit 5 [fol. 630] also to the Counsel for the General Counsel and I will ask you what that is?

(Handing document.) A (Examining document.)

It is a freight bill, Borden Truck Company.

Q Does the name of Mr. Hysell appear on that? A Yes, the name of Ralph Hysell is on that.

Q Was this done in your presence? A No.

Q Now, I hand you here the original of a copy of Respondent's Exhibit No. 4 and I give a copy of Respondent's Exhibit No. 4 to Counsel for General Counsel and I ask you what this is?

(Handing document.) A (Examining document.)

It is an employees withholding exemption certificate.

Q Pertaining to whom? A Tommy Lee Burchell.

Q When did Mr. Burchell first become an employee of your company? A March 4, 1965.

MR. JENKINS: We move to introduce Respondent's Exhibit No. 4 into evidence.

[fol. 633] Q (By Mr. Jenkins) Mrs. Closterman, I hand you Respondent's Exhibit No. 6, and ask you to state what that is?

(Handing document.) A (Examining document.)

You mean, you want me to—

Q Just state generally what it is? A It is a notice that was put on the bulletin board.

Q Was it signed by anybody in your company? A It was signed by Karl Gissel.

Q (And is what you have here a copy of it? A It is.

MR. BAKER: I think I have the original of that.

MR. JENKINS: I will offer—I would like to have the original.

I would like to offer it into evidence.

Perhaps we could do it by stipulation.

[fol. 634] MR. BAKER: Here is the document.

(Handing document.)

MR. JENKINS: Thank you.

Counsel for General Counsel has gotten the notice from the Bulletin Board apparently and it is the same as Respondent's Exhibit No. 6, I think.

MR. BAKER: I did not get that from the bulletin board. It is a notice from the bulletin board, but I did not get it from the bulletin board.

I had the notice in my file and I could not have obtained it from the bulletin board personally.

MR. JENKINS: Where did you get it from?

MR. BAKER: It came from the file.

MR. JENKINS: It is an official file from the bulletin board of the company and I would like to know where the General Counsel got this.

MR. BAKER: We got it from our file.

Q (By Mr. Jenkins) Is this the original of Respondent's Exhibit No. 6 which has been furnished by the General Counsel, I will hand it to you, and then I will ask you

if this is the notice which was posted on the bulletin board of the company?

(Handing document.) A (Examining document.)

Yes, it is.

[fol. 635] Q I see.

Was it put on the bulletin board on or about February 12, 1965? A Yes, it was.

[fol. 636] TRIAL EXAMINER: Yes, it is received.

(Whereupon, the document previously marked as Respondent's Exhibit No. 6, for identification, was received in evidence.)

Q. (By Mr. Jenkins) Are you familiar with the way Ralph Hysell signs his name? A Yes.

Q I will ask you, has he ever signed his name in your presence before? A Yes.

Q I will ask you if the signature which appears on Respondent's Exhibit No. 5 and the signature which appears on Respondent's Exhibit No. 3, will you state whether or not they appear to you to be the same signature of Ralph Hysell? A Yes, it does.

MR. JENKINS: We move into evidence Respondent's Exhibit 3 and Respondent's Exhibit 5.

[fol. 638] MR. JENKINS: Yes, after all the Respondent's Exhibit here where he signed his withholding statement says "Signed" and his name appears there.

TRIAL EXAMINER: Well, they will be received.

Respondent's Exhibits 3, 4 and 5 are received in evidence, and the record will indicate that Respondent's Exhibit No. 6 has heretofore been received.

(Whereupon, the documents previously marked as Respondent's Exhibits Nos. 3, 4 and 5; for identification, were received in evidence.)

[fol. 640] Q (By Mr. Jenkins) Now, Mrs. Closterman, I want you to direct your attention please to an employee of the company by the name of Herbert Mounts,

and I want you to direct your attention back to a time of February 15, 1965, on Monday, when he was due back at the company from a two weeks vacation.

Can you state whether or not you received any notice on Monday, February 15, 1965 or on Tuesday, February 16, 1965 as to the whereabouts of Mr. Mounts?

[fol. 641] MR. BAKER: As to that, there is no dispute; he says he did not come back to work until Wednesday.

[fol. 642] Q (By Mr. Jenkins) What efforts did you make, if any, Mrs. Closterman, to try to locate him? A Well, I didn't myself, but one of the girls did in the office.

Q Was this under your supervision? A It was under Charles' supervision.

Q What was done, to your knowledge? A Well, he had --

MR. BAKER: I will object.

TRIAL EXAMINER: Do you know, were you present when it was done?

THE WITNESS: I was present when Charles told this person to try to find him.

Q (By Mr. Jenkins) Was it in your presence? A Yes, it was.

Q What happened? A Well, she tried to find him.

Q How did she go about it? A She called his mother-in-law.

Q Did you see her making the call in response to his [fol. 643] directions? A Yes.

Q But you do not know who she talked to or what was said? A No.

[fol. 646] JOHN E. JENKINS, JR.

was called as a witness by and on behalf of the Respondent and, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

THE WITNESS: I am Johnny Jenkins, Jr., and I am an attorney practicing law in Huntington, West Virginia, and I have been retained along with my firm, to represent the Gissel Packing Company in connection with this labor case coming before the Trial Examiner in the National Labor Relations Board.

In the course of the hearing of this case, it is my understanding as I was present when a witness by the name of Jerry Lee Frye testified, Mr. Frye testified that I interviewed him and that I represented to this witness that I was:

"Number one, that I was in Cincinnati; and, Number two, that I was a representative of the National Labor Relations Board."

I never made a statement to Jerry Frye, directly or indirectly, that I was from Cincinnati.

[fol. 647] I never made a statement to this witness in any way that I was a representative of the National Labor Relations Board or an employee of the Federal Government or a representative of any Government agency.

I interviewed Jerry Frye at the offices of Gissel Packing Company on April 1, 1965, and none of these things that Mr. Frye alleges to be my representations to him are correct and I am denying them.

That constitutes my direct testimony.

I am available for cross-examination.

CROSS-EXAMINATION

BY MR. BAKER:

Q What did you tell Mr. Frye, Mr. Jenkins? **A** I told Mr. Frye, if my recollection is correct, that I was investigating a case and I asked him questions concerning incidents about his refusal to shake hides, along with other employees, and I asked him questions as to whether or not anyone had made threats to him or not, as had been alleged in the Complaint in this hearing.

Q Did you tell him who were were? **A** I told him what my name was and I introduced the court reporter.

Q Did you tell him you were an attorney for the company? A I do not recall whether I told him that I was the attorney for the company or not.

Q Did you tell him why you wanted to ask him any [fol. 648] questions other than that you were just investigating, what did you say, unfair labor practice charges? A I do not remember the exact words I used, but I told him what the general purpose of my investigation was.

Q Did you tell him or in any way indicate to him that you had been retained by the Gissel Packing Company as their attorney? A I do not remember whether or not I told him that I was working for the Gissel Packing Company or not.

It is my recollection that I did, but I am not sure that I did.

I interviewed a large number of witnesses on this day.

Q Did you advise at—advise him at any time—in any way that he did not have to answer your questions and that no retaliation would be made by the company? A It is my recollection that I just asked him to tell me the truth and there would be nothing else involved.

Q Did the reporter reduce to writing everything that was said or only the part after you began to ask questions?

A The reporter reduced to writing every word that was said.

Q Including your introduction? A Correct.

Q And who did you say the reporter was? A Mr. [fol. 649] Glen Matthews, who is the official reporter for the Domestic Relations Court in Cabeel County.

Q Did you have such a transcript prepared? A Yes.

Q Do you have it in your possession? A That is correct.

GENERAL COUNSEL EXHIBIT NO. 2

January 22, 1965

Mr. Charles Gissell
Gissell Packing Company
Huntington, West Virginia

Dear Mr. Gissell:

This letter will serve to confirm our telephone conversation earlier today in which I requested recognition and bargaining for the eligible employees in your plant. Our Union represents a majority of your eligible employees and we are prepared to deliver to you our signed application cards for the purpose of checking them against your payroll so that there will be no possible doubt as to our majority status. We stand ready and willing at any time to deliver these to you or to your representative for the purpose of ascertaining our majority status.

Please advise.

Very truly yours,

/s/ Sherwood M. Spencer

SMS:d

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

P.S. Eligible employees of your plant includes truck drivers.

/s/ Sherwood M. Spencer

[Registered Receipt No. 740264
Dated January 22, 1965
Sent To—Charles Gissell
Gissell Packing Co.
Huntington, West Virginia
Signed—Charles Gissell
Date Delivered—January 25, 1965]

GENERAL COUNSEL EXHIBIT NO. 3

GISSEL PACKING COMPANY, INC.

720 West Fifteenth Street
HUNTINGTON 4, WEST VIRGINIA

January 26, 1965

Mr. Eberwood M. Spencer
Food Store Employees Union
Post Office Box 2751
Charleston, West Virginia 25330

Dear Sir:

We acknowledge your letter of January 22 and your telephone conversation of the same date at which time you advised us you would contact us further about your Union's interest in representing employees of our Company.

We refuse to recognize your Union as the representative of our employees because you do not represent a majority of them. At an earlier election conducted by the National Labor Relations Board you contended that you represented a majority of our employees, but when the election was held an overwhelming majority of the employees rejected your Union and we do not believe there has been any change of circumstance or opinion of our employees since that time.

We are advised that it is the current organizing technique of your Union to obtain signatures on so called application cards by a variety of means and representations which are not compatible with a free exercise of and employee's choice. We are advised of instance of direct misrepresentation in obtaining employees signatures by your Union under such circumstances. Employees signatures are not a free expression of employees sentiments with respect to Union representation as provided for under the National Labor Relations Act.

Your Letter of January 22 suggests that you desire to represent certain employees of our plant including truck drivers and we do not know who "eligible employees" are

as used in your letter and we further do not think that
the truck drivers are a part of any appropriate bargaining
unit.

If you really represent in your opinion a majority of
the employees of our plant, we think that you would have
immediately petitioned the National Labor Relations Board
to hold a fair and honest election, giving our employees
the right to express their opinion as provided for under
Section 9 of the Act, and their choice could be made in an
appropriate bargaining unit in a fairly conducted election.

Your very truly,

GISSEL PACKING COMPANY, INC.

By /s/ K. H. Gissel (Charles)
Vice President.

GENERAL COUNSEL EXHIBIT NO. 4

February 10, 1965

Mr. K. H. Gissell, Vice President
Gissell Packing Company, Inc.
720 West 15th Street
Huntington, West Virginia

Dear Sir:

This letter will acknowledge your reply to our letter of January 22, showing date of January 26, 1965.

We note that you are refusing to recognize our union as a representative of the employees because you claim we do not represent a majority. You further advise us that it is your understanding that it is our current organizing technique to obtain authorization cards from the employees in order that we may claim representation. You go on further to say that we previously indicated we represented a majority of the employees and when an election was held the Union was overwhelmingly defeated. All of this is true.

1. We are certain that the employees of your plant understand well what representation by our Union means to them and when they sign one of our authorization cards they are giving us the right to bargain for them.

2. There is nothing illegal in our requesting representation and bargaining without an election of the employees.

3. The coercion and intimidation and illegal interrogation and threats which occur between the time an election is petitioned and the actual election by the employers is most difficult for us to combat. The N. L. R. B. and the courts have recognized that an election is no longer necessary when we actually represent a majority of the employees.

We are again offering to deliver to you or to your representative copies of our signed authorization cards which have been signed by a wide majority of your employees. There can be no doubt as to our position with regard to representation if you accept our offer and check these signed authorizations against payroll records in your office.

We are certain that your claim that the employees do not know what they are doing with respect to signing these cards is in error. We hold a much greater regard for the intelligence of your employees. Therefore, we find we have no choice except to file charges against the company for failure to recognize our Union and failure to bargain with us as representative of the employees because you can no longer express any good faith doubt as to our representation.

Very truly yours,

/s/ Sherwood M. Spencer

SMS:d

GENERAL COUNSEL EXHIBIT NO. 5

GISSEL PACKING COMPANY, INC.

720 West Fifteenth Street
HUNTINGTON 4, WEST VIRGINIA

February 12, 1965

Mr. Sherwood M. Spencer
Food Store Employees Union
Post Office Box 2751
Charleston, West Virginia 25330

Dear Sir:

We acknowledge Your Letter of February 10.

You recite that there is nothing illegal about your requesting representation in bargaining for our employees, and there is nothing illegal about our refusing your request because we honestly do not believe you represent a majority of our employees. Under such circumstances, the National Labor Relations Board may conduct a fair and impartial election wherein the employees may determine for themselves whether or not your union is entitled to represent them.

Your reference to "coercion and intimidation and illegal interrogation and threats which occur between the time an election is petitioned and the actual election by the employer" certainly does not apply to us. If you intend to imply that these factors exist in the present situation, you are completely mistaken and your approach further bolsters our opinion that you do not really honestly represent a majority of the employees in our plant. We are convinced that you are resorting to these pressure and scare tactics and implied intimidation in order to get around and expression of the true wishes of our employees which the law says that are entitled to express.

We sincerely regret that you are apparently going to subject us to becoming involved with unfair labor practice

charges, however since we do not believe that your union represents a majority of our employees, we see no alternative except to let the matter be determined according to the law.

Sincerely,

GISSEL PACKING COMPANY, INC.

By /s/ Karl Gissel
Vice President.

GENERAL COUNSEL EXHIBIT NO. 6

February 16, 1965

Mr. Carl Gissell, Vice President
Gissell Packing Company, Inc.
726 15th Street
Huntington, West Virginia

Dear Mr. Gissell:

Our Union has no intention of engaging in a series of word battles by the way of communications to or from the other. Our offer to present to you the signed authorization cards for representation still stands and will continue to stand.

I am certain that the employees of your plant knew what they were doing when they signed those simply worded authorization cards. They are still available and will be available for your inspection at any time.

Very truly yours,

/s/ Sherwood M. Spencer

SMS:d

GENERAL COUNSEL EXHIBIT NO. 7

*** GISSEL PACKING COMPANY, INC. ***

720 West Fifteenth Street
HUNTINGTON 4, WEST VIRGINIA

February 17, 1965

Mr. Sherwood M. Spencer
Food Store Employees Union
P. O. Box 2751
Charleston, W. Va. 25330

Dear Sir:

Referring to your letter of February 16, 1965, Our position is clearly set before you on our proceeding Correspondence.

Gissel Packing Co., Inc.

/s/ Karl Gissel
Karl H. Gissel

KHG:e

GENERAL COUNSEL EXHIBIT 9-C

GISSEL PACKING CO., INC.

720 W. 15th St.

Huntington 4, W. Va.

List of everyone on our payroll as of January 22, 1965:

Mrs. R. E. Gissel
F. W. Gissell
H. L. Gissel
K. H. Gissel
A. I. Glosterman
H. B. Martin
Harriett Curtis
Edith Lewis
Marie Snead
Leoris Gissel
Siddy Caldwell
Nell Charles
Evelyn Collins
Emogene Ellis
Alfreda Hutchison
C. F. Adkins
K. R. Adkins
I. W. Bailey
D. F. Billups
J. J. Bonham
I. H. Caldwell
George Collins
R. L. Curry
D. W. Ellis
Earl Fortner, Jr.
Francis Fortune
I. R. Hutchison
I. R. Hysell
R. H. Hysell
J. K. Johnson
D. C. Kidd

H. C. Lewis
C. F. McComas, Jr.
E. B. Maynard, Jr.
Donald Meadows
J. T. Mollohan
W. R. Mollohan
R. D. Moore
W. D. Moore
Dewey Parsley, Jr.
Curtis Queen
F. D. Rowe
J. M. Vance
Elisha Watts
R. B. Simon
J. I. Ellis
J. I. Frye
R. F. Lewis
H. F. Mounts, Jr.
J. F. Robinson
S. H. Rowe
J. B. Scott
Clifford Carley
W. W. Bowyer
N. A. Gibson
J. B. Harless
T. I. Jordan
C. R. Kitchen
E. M. Osborne
C. F. Sprigle
I. E. Turpin

GENERAL COUNSEL EXHIBIT 10-A

APPLICATION

Food Store Employees Union, Local #347

P. O. Box 2751

Charleston, W. Va.

The undersigned hereby authorizes this Union to represent his or her interest in collective bargaining concerning wages, hours, and working conditions.

Employer's Name—Gissell Packing Co.

Employer's Address—

Date—1/21/65

Your Name—Jessie J. Bonham

Your Street Address—1745 Jefferson St.

City and State—Huntington, W. Va.

Your Phone Number

RESPONDENT'S EXHIBIT NO. 1

• • • GISSEL PACKING COMPANY, INC. • • •
720 West Fifteenth Street • • •
HUNTINGTON 4, WEST VIRGINIA

February 19, 1965

Mr. Herbert F. Mounts Jr.
121 Marion Street
Huntington, W. Va.

Dear Sir:

Your refusal to follow orders today with respect to having the hams put in the pans by 11:30 A.M. has been called to our attention. You have advised Mr. Karl Gissel that you misunderstood instructions, although we are satisfied that you did not misunderstand your orders. As you know, this has happened on earlier occasions.

You were due to return and report for work after your vacation on Monday, February 15, and you did not appear until Wednesday, February 17. We attempted to contact you unsuccessfully, and you have no excuse for your failure to appear for work as scheduled.

In addition, you have been regularly late for work on a number of occasions.

Your discharge for failure to report for work and insubordination has been recommended, but the company has decided to retain you as an employee. You are directed to report for work at the regular time on Monday, February 22. However, this letter will be a final warning to you that in the event you are late for work or refuse to appear for work without a proper excuse and without advanced warning, or in the event that you refuse to follow orders of your superiors, severe disciplinary action will be taken against you.

Yours very truly,

GISSEL PACKING CO., Inc.

/s/ Alfreda L. Closterman

ALC/e

RESPONDENT'S EXHIBIT NO. 2

STATE OF WEST VIRGINIA)
) SS:
COUNTY OF CABELL)

AFFIDAVIT)

I, Elmer (Pork Chop) Maynard, being duly sworn on my oath state: I reside 1330 Madison Ave., Huntington, W. Va. I can not be reached by phone at home.

I started working for Gissel Packing in about September, 1964 and I now bone hams and pack boiled hams.

On or about January 21, 1965 two Union agents from the Food Store Employees Union came up to me after work while I was the Boys Club in Huntington, W. Va. One of the employees, I don't remember his name, had asked me the day before if I wanted to sign up for the Union. I told him yes, I'd be glad to sign up. He said he would have the Union men come to meet me. I told that employees that I would be at // E.B.M. the Boys Club that night of January 21, 1965 if they wanted to see me. That employee and two agents met me that night at the Boys Club, asked me to sign a union—which I did—and they then left. They didn't promise me anything if I would sign and they didn't say anything would happen if I didn't sign.

On or about February 18, 1965, the day before Red Mount was fired, Charles E.B.M. Gissel came up to me while I was boning hams and asked me if I was aiming to walk out when the rest of the employees walked out over the Union. I said I didn't know anything about any Union. He then walked away. No one else was around when Charles Gissel asked me that.

On Monday, February 22, 1965 Jerry Frye and I were trimming hams in pans to be boiled. We pushed the trimmings on to the floor. Herbert Gissel, head of the sausage floor, jumped us about throwing the trimmings on the

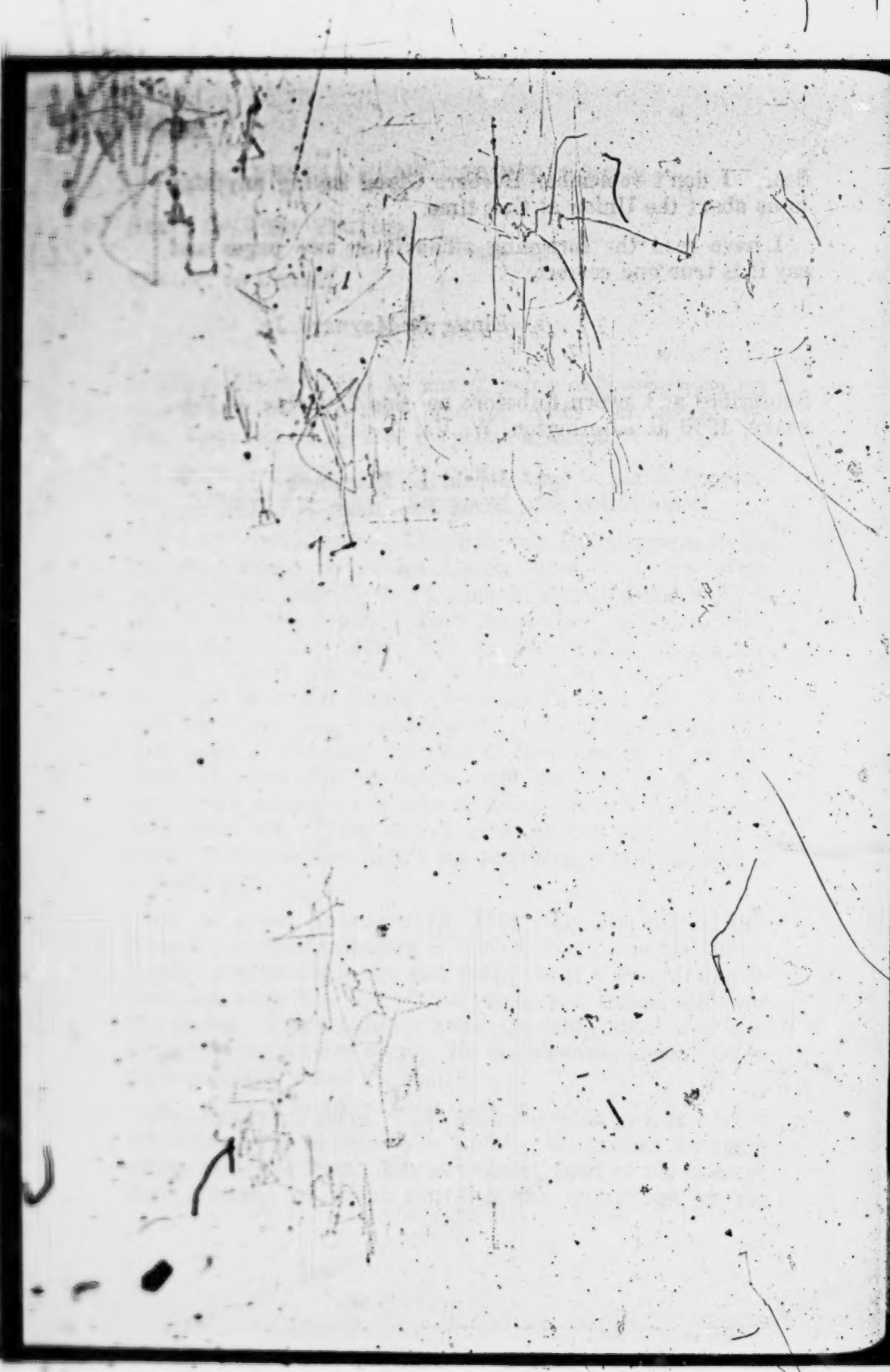
floor. I don't remember Herbert Gissel saying anything to us about the Union at that time.

I have read the foregoing affidavit on two pages and say it is true and correct.

/s/ Elmer B. Maynard Jr.

Subscribed and sworn to before me this 24th day of February, 1965 at Huntington, W. Va.

/s/ Jerald L. Eisenberg
Field Examiner, N.L.R.B.



RESPONDENT EXHIBIT NO. 3

Frank Beach

EMPLOYEE'S WITHDRAWING EXEMPTION CERTIFICATE

12-11-76

Print full name RACPH HYSSELL Social Security No. 236-62-3237
Print home address 1211 37th Ave City HAILETOWN State VA

HOW TO CLAIM YOUR WITHDRAWING EXEMPTIONS

1. If SINGLE, and you claim an exemption, write the figure "1".
2. If MARRIED, one exemption each for husband and wife if not claimed on another certificate.
(1) If you claim both of these exemptions, write the figure "2".
(2) If you claim one of these exemptions, write the figure "1".
(3) If you claim neither of these exemptions, write "0".
3. Exemptions for age and blindness (applicable only to you and your wife but not to dependents).
(a) If you or your wife will be 65 years of age or older at the end of the year, and you claim this exemption, write "1". If both will be 65 or older, and you claim both of these exemptions, write "2".
(b) If you or your wife are blind, and you claim this exemption, write the figure "1". If both are blind, and you claim both of these exemptions, write the figure "2".
4. If you claim exemptions for you or your dependents, write the number of such exemptions. (Do not claim exemptions for a dependent unless you are qualified under instruction 4 on other side.)
5. Add the number of exemptions which you have claimed above and write the total.
6. Additional withholding tax, if required, under agreement with employer. See instruction 1.

☒ 7

Carry over the number of withholding exemptions claimed on this certificate does not exceed the number to which I am entitled.

(Date) 12/11/76 19 76 12-11-76 (Signed) RACPH HYSSELL

EMPLOYEE'S WITHHOLDING EXEMPTION CERTIFICATE

Social Security

Account Number

6-9 30, 18

First Name Henry Last Name Baruch

Room 202 - 784 City NY State NY

HOW TO CLAIM YOUR WITHHOLDING EXEMPTIONS

1. If SINGLE, and you claim an exemption, write the figure "1".
2. If MARRIED, one exemption each is allowable for husband and wife if not claimed on another certificate.
 - (a) If you claim both of these exemptions, write the figure "2".
 - (b) If you claim one of these exemptions, write the figure "1".
 - (c) If you claim neither of these exemptions, write the figure "0".
3. Exemptions for age and blindness (applicable only to you and your wife but not to dependents):
 - (a) If you or your wife will be 65 years of age or older at the end of the year, and you claim this exemption, write "1"; if both will be 65 or older, and you claim both of these exemptions, write "2".
 - (b) If you or your wife are blind, and you claim this exemption, write the figure "1"; if both are blind, and you claim both of these exemptions, write the figure "2".
4. If you claim exemptions for one or more dependents, write the number of such exemptions. (Do not claim exemptions for a dependent unless you are qualified under instructions 4 on other side.)

☒ 2

5. Add the number of exemptions which you have claimed above and write the total.

6. Additional withholding tax will be withheld under agreement with employer. See instruction 1.

7. Copy this certificate to the employer and attach to the certificate when you submit the number to which I am entitled.

(Signature) Henry Baruch (Typed Name) Henry Baruch

May 24 1943

APR 20 1943



RESPONDENT'S EXHIBIT NO. 6**February 12, 1965****NOTICE**

ALL EMPLOYEES ARE NOTIFIED THAT NO ONE IS AUTHORIZED TO REPRESENT THE VIEWS OF THE COMPANY OR ANY LABOR OR UNION MATTERS, EXCEPT ALFREDA CLOSTERMAN. IF ANYONE ATTEMPTS TO DO SO, YOU ARE TO REPORT IT AT ONCE TO ALFREDA CLOSTERMAN IN WRITING.

GISSEL PACKING CO., INC.**POSTED 2/17/65****11:25 a.m.**

TRIAL EXAMINER'S DECISION**Statement of the Case**

Upon charges filed on February 11 and May 12, 1965, by the Food Store Employees Union, Local # 347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, the General Counsel, acting through the Regional Director for the Ninth Region, issued complaints on March 31 and June 21, 1965. On the latter date, the Regional Director also issued an order consolidating the two cases for hearing. The complaints alleged that Respondent had engaged in conduct which violated Section 8(a) (1), (3) and (5) of the Act. In its answers, Respondent admitted certain allegations of the complaints, such as the commerce allegations, but denied having committed any unfair labor practice.

Thereafter, pursuant to due notice, a hearing was held before the undersigned Trial Examiner at Huntington, West Virginia, on August 4, 5, 6, and 17, 1965. All parties were represented and were given full opportunity to present evidence, to examine and cross examine witnesses, to argue orally and to file briefs. The parties waived oral argument and no briefs were filed.

Upon consideration of the entire record and upon my observation of the witnesses while testifying, I make the following:

Findings of fact**I. The business of Respondent; the labor organization involved**

Gissel Packing Company, Inc., herein at times called the Company or the Respondent, is a West Virginia corporation with its principal office and place of business in Huntington, West Virginia. It is engaged in the slaughtering, processing, and non-retail sale of beef and pork products. In the 12 months prior to the issuance of each of the complaints, each a representative period, Respondent had a direct inflow of products and livestock, in interstate commerce, valued in excess of \$50,000, which was

purchased and shipped directly to its plant from points outside the State of West Virginia.

Upon the foregoing undisputed facts, Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also undisputed and I find that Food Store Employees Union, Local # 347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, hereinafter called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II: The alleged unfair labor practices

A. *The issues*

The complaints allege that Respondent engaged in conduct, such as interrogation, threats, and surveillance, which constituted interference, restraint, and coercion, that it discharged two employees because of their Union membership and activity, and that it violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union which represented a majority of its employees in an appropriate bargaining unit. In turn, Respondent contended that it had not engaged in any conduct which violated Section 8(a)(1) of the Act, stated that the employees were not discharged but quit, and asserted that it refused to bargain with the Union because it doubted both the Union's majority and the appropriateness of the bargaining unit.

As in many Board cases, the conclusions reached depend in considerable part upon whether the Examiner credits the witnesses called by the General Counsel or those called by Respondent. Having observed the demeanor of the witnesses and having considered the testimony in the light of all of the circumstances, I have concluded that some of the witnesses for each party testified truthfully in some respects and untruthfully in others. Although the general impression seems to be that a witness is either completely truthful or completely untruthful, "nothing is more common in all kinds of judicial decisions than to believe some and not all" of the testimony of a witness. N.L.R.B.

v. Universal Camera Corp., 179 F.2d 749, 754 (C.A. 2). As a result, "It is no reason for refusing to accept everything a witness says, because you do not believe all . . ." that he says. (*Ibid.*)

In each case, the degree of the interest of the witness in the outcome of the proceeding has been considered in determining his credibility. Some of the witnesses for both sides had a financial interest in the outcome of the proceeding while the interest of others was more subjective, such as an interest in seeing the General Counsel and, indirectly, the Union win or lose. As the Supreme Court said in *N.L.R.B. v. Walton Mfg. Co.*, 369 U.S. 404, 408:

For the demeanor of a witness

"... may satisfy the tribunal, not only that the witness' testimony is not true, but that the truth is the opposite of his story; for the denial of one, who has a motive to deny, may be uttered with such hesitation, discomfort, arrogance, or defiance, as to give assurance that he is fabricating, and that, if he is, there is no alternative but to assume the truth of what he denies." *Dyer v. McDougall*, 201 F.2d 265, 269. (Emphasis supplied.)

Similarly, the court observed in *N.L.R.B. v. Warrenburg Board & Paper Corporation*, 340 F.2d 920, 923 (C.A. 2), that "The testimony of those who attempted to buttress the Respondent's position was of questionable value since two of the witnesses were closely identified with the Company's management and the others, although originally Union members, were not shown to have retained their membership." And the court pointed out in *N.L.R.B. v. Radcliffe*, 211 F.2d 309, 315 (C.A. 9), certiorari denied, 348 U.S. 833, that the Board "rightfully may decline to credit the testimony of interested witnesses, even though such testimony is uncontradicted."

As will appear, I have credited the testimony of most of the witnesses called by counsel for the General Counsel and have discredited much of the testimony of the witnesses called by Respondent. However, I have not credited the testimony of Herbert Mount, Jr., a witness for the

General Counsel, except in those cases in which it is corroborated by similar testimony given by credited witnesses or other record evidence.¹ In other words, the ~~conclusionary~~ findings and the recommended order set forth *infra* would be the same even had Mount not been a witness. My inability (to accept) Mount's uncorroborated testimony is based in part upon his evasive manner while testifying and in part upon the conflicts in his testimony at the hearing. On the other hand, when it has been found that a management representative made a statement to a creditable witness, I see no reason to doubt that the same representative made a similar statement to Mount or in his presence. Moreover, it is clear from the testimony of one of Respondent's witnesses that Mount was testifying truthfully in part, i.e., when he asserted that he saw Terry Lewis, the son of one of the Company's vice presidents, at a hotel before a Union meeting and heard Lewis make a telephone call to his aunt, Company Secretary-Treasurer Alfreda Closterman, at the plant. (See *infra*).

The presence of Lewis at the hotel has played an important part in my failure to credit most of the testimony of Company Vice President Karl Gissel, who is referred to in the record and herein as Charles Gissel. Although Gissel's testimony is frequently indirect (see *infra*), he sought to create the impression that he did not make the statements attributed to him by witnesses for the General Counsel. In support of his statements, Gissel repeatedly asserted that the Company had learned, as a result of a prior election and unfair labor practice proceeding, what it could and could not do in connection with a Union campaign. However, the admitted presence of Lewis at the hotel is wholly inconsistent with Gissel's claim that the Company was determined not to commit any unfair labor practice during the 1965 Union campaign. No doubt, the Company was given good advice and made good resolutions about how it would conduct itself. Unfortunately, it is often difficult to heed good advice and keep good resolutions when faced with the very situation to which

¹ In addition, I have credited little of the testimony of General Counsel's witness Maynard other than that which could have been and was not refuted by available records. (See *infra*.)

the advice and resolutions were intended to apply.² As noted by the court in *Hendrix Mfg. Co. v. N.L.R.B.*, 321 F.2d 100, 100-104 (C.A. 5):

When, as done here, an employer sets out to campaign against a union, one of the risks is that out of zeal, ignorance, or otherwise, foremen, supervisors, and similar representatives in championing the anti-union cause will overstep the mark.

Finally, I have taken into consideration the Company's failure to adduce documentary evidence, such as employee timecards, which were admittedly in existence, and which could have been produced to corroborate critical portions of Charles Gissel's testimony which were contrary to claims made by witnesses for the General Counsel. *N.L.R.B. v. Collins & Aikman Corporation*, 146 F.2d 454, 456 (C.A. 4). There had been ample time to obtain records for there was a 10 day adjournment prior to the day on which Gissel testified and some documentary evidence was offered by Respondent and received into evidence that day. Therefore, I can only assume that the cards were not offered because they would not have supported Gissel's statements. *Interstate Circuit v. U.S.*, 306 U.S. 208, 225-226; *N.L.R.B. v. Gendys Bros. Mfg. Co.*, 187 F.2d 829, 832 (C.A. 7); *N.L.R.B. v. A.P.W. Products Co.*, 316 F.2d 580, 582 (C.A. 2); *N.L.R.B. v. Wallick*, 198 F.2d 477, 480 (C.A. 2).

B. Background

In late 1960 or early 1961, the same Union claimed to represent a majority of Gissel's employees and filed a representation petition with the Board. A hearing was held and the Board issued a Decision and Direction of Election on January 27, 1961 (Case No. 9-RC-3966), in

²When Charles Gissel was asked, "What is a 'Gissel fit'?" he answered, "You ask them boys (indicating); they will tell you. It is no more than a man getting mad and cursing and raising hell." Although Gissel said that he had been warned that the Union employees would try to make him mad, he did not quote even one provocative statement made by an employee. Vice President Charles Gissel also admitted that he gets mad and that "yelling and cursing" is not uncommon around the plant.

which it found the following unit appropriate for the purpose of collective bargaining:

All production and maintenance employees of the Employer at its Huntington, West Virginia, plant including truck drivers, truck driver salesmen and the janitor, but excluding office clerical employees, salesmen, professional employees, guards, officers of the Employer, the salesmen foreman, the truck salesmen foreman, the working foremen of the processing and packaging department, the slaughter house, the freight and delivery department, and the maintenance department, and all other supervisors as defined by the Act.³

An election was subsequently held and the Union lost. The Union filed unfair labor practice charges against Gissel, apparently in 1960, a hearing was held in May, 1960, and on July 21, 1960, a Trial Examiner issued an Intermediate Report, to which no exceptions were filed, in which it was found that Respondent's president, Paula Gissel (Mrs. R. E. Gissel) informed the employees in a speech that the Company would not recognize the Union even if the employees desired representation, that she would close the plant or greatly curtail its operations rather than accept the Union; and "clearly implied" that the employees would be given the benefit of group insurance if they rejected the Union.⁴ It was also found that her son, Vice President Herbert Gissel, told a group of employees that the Company would not accept the Union, that there would be discrimination against employees who joined the Union, and that management might close the

³ This is the unit set forth in the complaint as appropriate for bargaining. An issue was raised in the 1961 proceeding concerning the truck driver salesmen and the Board found that they "like the truck drivers, have sufficient interest in common with the production and maintenance employees" to warrant including them in the unit. As set forth *infra*, the Company contended in the instant case that the unit for which the Union sought to bargain was inappropriate because the truck driver salesmen were included.

⁴ This Intermediate Report was received and has been considered only as the Union's explanation of why it did not file a representation petition during the 1965 Union campaign.

plant or run it on a smaller basis if the Union came in. In addition, it was found that another son, Vice President Edward Gissel, told a group of employees that Mrs. Gissel would close the plant before she would let a union represent them. The foregoing conduct was found to violate Section 8(a)(1) of the Act. Allegations that the Company engaged in other conduct violative of Section 8(a)(1) were found unsupported by the record. *Gissel Packing Company*, Case No. 9-CA-2068.

C. *The refusal to bargain*

(1) *The request and refusal*

The Union began its second campaign among Respondent's employees about the middle of January, 1965. As set forth *infra*, there are, at most, 47 employees in the unit alleged by the complaint to be appropriate for collective bargaining and 31 of them signed authorization cards between January 13 and January 22, 1965.

On January 22, Union Representative Sherwood Spencer made a telephone call to Company Vice President Charles Gissel. He asked Gissel if the latter remembered him and Gissel said that he believed he did.⁵ Spencer then told Gissel that the Union represented a majority of the employees and requested recognition and bargaining. Gissel replied that Spencer would have to talk to the Company's attorneys and gave Spencer the name of at least one of them. (According to Gissel, when Spencer said he "wanted to talk about the Union, I refused to answer him, I refused to answer his questions".)

That same day, Spencer wrote Charles Gissel:

This letter will confirm our telephone conversation earlier today in which I requested recognition and bargaining for the eligible employees in your plant. Our Union represents a majority of your eligible employees and we are prepared to deliver to you our signed application cards for the purpose of checking

⁵ Spencer was apparently involved in the 1960-1961 campaign and hearing.

them against your payroll so that there will be no possible doubt as to our majority status. We stand ready and willing at any time to deliver these to you or to your representative for the purpose of ascertaining our majority status.

P.S. Eligible employees of your plant includes [sic] truckdrivers.

By letter dated January 26, Vice President Charles Gissel told Spencer:

We acknowledge your letter of January 22 and your telephone conversation of the same date at which time you advised us you would contact us further about your Union's interest in representing employees of our Company.

We refuse to recognize your Union as the representative of our employees because you do not represent a majority of them. At an earlier election conducted by the National Labor Relations Board you contended that you represented a majority of our employees, but when the election was held an overwhelming majority of the employees rejected your Union and we do not believe that there has been any change in circumstance or opinion of our employees since that time.

We are advised that it is the current organizing technique of your Union to obtain signatures on so called application cards by a variety of means and representations which are not compatible with a free exercise of an employee's choice. We are advised of instances of direct misrepresentation in obtaining employees' signatures by your Union under such circumstances. Employees' signatures are not a free expression of employees' sentiments with respect to Union representation as provided for under the National Labor Relations Act.

Your letter of January 22 suggests that you desire to represent certain employees of our plant including truck drivers and we do not know who "eligible employees" are as used in your letter and we further do not think that the truck drivers are a part of any appropriate bargaining unit.

If you really represent in your opinion a majority of the employees of our plant, we think that you would have heretofore petitioned the National Labor Relations Board to hold a fair and honest election, giving our employees the right to express their opinion as provided for under Section 7 of the Act, and their choice could be made in an appropriate bargaining unit in a fairly conducted election.

On February 10, Union Representative Spencer wrote Charles Gissel:

This letter will acknowledge your reply to our letter of January 22, showing date of January 26, 1965.

We note that you are refusing to recognize our union as a representative of the employees because you claim we do not represent a majority. You further advise us that it is your understanding that it is our current organizing technique to obtain authorization cards from the employees in order that we may claim representation. You go on further to say that we previously indicated that we represented a majority of the employees and when an election was held the Union was overwhelming defeated. All of this is true.

1. We are certain that the employees of your plant understand well what representation by our Union means to them and when they sign one of our authorization cards they are giving us the right to bargain for them.

2. There is nothing illegal in our requesting representation and bargaining without an election of the employees.

3. The coercion and intimidation and illegal interrogation and threats which occur between the time an election is petitioned and the actual election by the employers is most difficult for us to combat. The N.L.R.B. and the courts have recognized that an election is no longer necessary when we actually represent a majority of the employees.

We are again offering to deliver to you or to your representative copies of our signed authorization cards which have been signed by a wide majority of your employees. There can be no doubt as to our position with regard to representation if you accept our offer and check these signed authorization cards against payroll records in your office.

We are certain that your claim that the employees do not know what they are doing with respect to signing these cards is in error. We hold a much greater regard for the intelligence of your employees. Therefore, we find we have no choice except to file charges against the company for failure to recognize our Union and failure to bargain with us as representative of the employees because you can no longer express any good faith doubt as to our representation.

In his letter in reply, dated February 12, Vice President Charles Gissel stated that there was nothing "illegal" about the Company's refusal to bargain because it "honestly" doubted the Union's majority. He repeated that an election should be conducted by the Board and further declared that the Union's reference to "coercion", "intimidation", "illegal interrogation", and "threats" by employers did not apply to Gissel. The Union's "approach", the letter went on, "bolsters our opinion that you do not really honestly represent a majority of the employees." In addition, Gissel charged that the Union was using "These pressures and scare tactics in order to get around [the] expression of the true wishes of our employees" Finally, the Company said that although it regretted the possibility of unfair labor practice charges, it still doubted the Union's majority and therefore saw no alternative except to allow the matter to be "determined according to the law."*

* Although all of the Company's letters to the Union are signed Karl (or Charles) Gissel, on or about February 12, the following notice was posted at the plant:

In its reply of February 16, the Union reiterated its offer to submit the signed cards to the Company and its belief that the employees knew what they were doing when they signed the cards.

Neither the Union nor the Company filed a representation petition as provided for by Section 9 of the Act.

Vice President Charles Gissel testified that upon receipt of the Union's request for recognition

We talked it over among ourselves and decided maybe they might not have a majority because the other time [the Union did not have a majority]. They lost the election.

As for its contention that the unit for which the Union was seeking to bargain was inappropriate, Gissel testified that the Company regarded the "peddle drivers" as salesmen who should not be in the unit.⁷ When asked on cross-examination whether Union Representative Spencer said "anything about selling," Gissel answered, "I don't know, I would have to study the letter and see. I didn't read it that far."⁸

* [Continued]

February 12, 1965

"NOTICE"

ALL EMPLOYEES ARE NOTIFIED THAT NO ONE IS AUTHORIZED TO REPRESENT THE VIEWS OF THE COMPANY [ON] ANY LABOR OR UNION MATTERS, EXCEPT ALFREDA CLOSTERMAN. IF ANYONE ATTEMPTS TO DO SO, YOU ARE TO REPORT IT AT ONCE TO ALFREDA CLOSTERMAN IN WRITING.

GISSSEL PACKING CO., INC.
Karl Gissel

⁷ Some of Respondent's regular rank-and-file employees occasionally drive trucks locally and it apparently does not object to their inclusion in the unit. Peddle drivers, who are at times referred to as truck driver salesmen, do not work the fixed schedule of the other employees. In addition, they are paid a salary plus commission whereas the production and maintenance employees are paid by the hour. Of course, the peddlers spend most of their time away from the plant.

⁸ Respondent introduced evidence concerning alleged misconduct which, presumably, was offered to justify its refusal to bargain.

(2) The unit and the authorization cards

As set forth *supra*, the unit established by the Board in 1961 included truck drivers and "truck driver salesmen" (or peddlers) but excluded, *inter alia*, office clerical employees, salesmen, officers of the Employer, the foremen of various named departments, and "all other supervisors as defined by the Act."

Respondent is a family business of which Mrs. R. E. (Paula) Gissel is president. Her sons and daughters, including Charles (K. H.) Gissel, Herbert Gissel, E. W. Gissel, and Edith Gissel Lewis are vice presidents of the Company. Alfreda Closterman is the secretary-treasurer. Charles Gissel is also supervisor of the shipping department and admittedly hires and fires employees in that department; Herbert Gissel is the supervisor of the sausage department and also hires and fires employees in that department; Leoris Gissel also has authority to hire and fire employees in her department; W. R. Mollohan is foreman of the boiling department; R. B. Simon is a supervisor in the shipping department; and Clifford Car-

Employee Rush Moore was asked about "incidents" which began "in January" and told about a stolen coat which was soiled in a vulgar manner. The owner of the coat was not a witness nor was any evidence offered indicating who had committed the act. Moore also listed the appearance of a newspaper clipping about the Union campaign. Both Moore and employee Daniel Ellis testified that several trucks blew up and that when they "felt" the oil it "felt" as if there was sand in it. Both Moore and Ellis testified that samples of the oil, which was purchased from the Pure Oil Company, were sent to that company for analysis but that no report had yet been received, i.e. in August. I do not believe that a company like Pure Oil would *delay 6 months* in analyzing the oil and reporting the results, a request which cast doubt on the purity of its product. No doubt employees Moore and Ellis believed that no report had been received, but I am convinced that Pure Oil sent a report and that it was not introduced into evidence because it did not substantiate the Company's claim. See cases cited *supra*. I note, also, that Ellis recommended that the Company buy its oil from another company, that this was done, and that there had been no trouble since. Ellis could not say definitely that the oil purchased from Pure Oil was new oil although he said that it "shouldn't" have been used oil. In the light of the above facts, I cannot find that there was sand in the oil.

ley is sales supervisor.* These 10 persons are therefore "officers of the Employer" and/or supervisors and, as such, are excluded from the unit. There are also two office employees (Martin and Curtis) and two salesmen (Jordan and Springle.)

When these 14 names are subtracted from the 61 on the January 22, 1965 payroll, it follows that there are, at most, 47 employees in the bargaining unit. There are also three assistant foremen or supervisors: Alfreda Hutchison, L. R. Hutchison, and Roman Edward "Eddie" Lewis.¹⁰ If these persons are excluded from the unit as "supervisors as defined by the Act", there would be only 44 employees in the unit established by the Board in 1961.¹¹

* In its 1961 Decision and Direction of Election, the Board did not pass upon the question of Mollohan's supervisory status and ruled that he could vote in the election subject to challenge. At the instant hearing, Charles Gissel identified Mollohan as "foreman of the boning department."

¹⁰ In its 1961 Decision, the Board included L. R. Hutchison in the unit because nothing in the record indicated that he enjoyed a "special status" because he is the son-in-law of one of the vice presidents. However, at the instant hearing, Charles Gissel described Hutchison as an assistant foreman in the sausage room and said that he "takes over" when Vice President Herbert Gissel is absent. He added, however, that Herbert Gissel is not absent very often. In its 1961 Decision, the Board held that the record was insufficient to enable it to determine whether Alfreda Hutchison and R. E. Lewis should be excluded from the unit and allowed them to vote subject to challenge. Charles Gissel testified at the instant hearing that Alfreda Hutchison is a "supervisor" in her mother's absence, and expressed the opinion that, during such periods, she "would probably have about the same authority as her mother." When asked if Alfreda Hutchison could "hire and fire and so forth" in her mother's absence, Gissel answered, "I think so, yes." (Alfreda Hutchison's mother is one of Mrs. Gissel's children.) R. E. "Eddie" Lewis is the son of Vice President Edith Lewis and Charles Gissel described him at the instant hearing as "a sort of assistant foreman" and said that he has the right to discipline employees who do not obey orders. R. E. Lewis was only 21 or 22 at the time of the hearing in August, 1965, and had only worked full time for 2 or 2½ years. This means that he was only 17 or 18 years old and a part-time employee in 1961 and it seems unlikely that he had any supervisory authority at that time.

¹¹ It has been assumed, for the purpose of determining the question of the Union's majority, that persons whose names appear

The record contains 31 cards. On each is the handwritten name of an employee who was in fact on the payroll on January 22 and a date, also handwritten. Only a few of the cards were identified by an official Union representative who testified that he saw the employee (whose handwritten name is on the card) sign the card on the date appearing on it.¹² The testimony of none of the Union representatives was disputed at the hearing and I find that the employees signed the cards on the dates which appear thereon. The persons on the January 22 payroll, their status, and the dates on which 31 of them signed cards are set forth in Appendix A, *infra*.

The cards, each of which bears a date no earlier than January 13 and no later than January 22, 1965, read as follows:

on the payroll and who are not identified in the record are employees. Of course, they are not in fact in the unit if they come within any of the classifications excluded by the Board.

¹² One card was identified by a fellow employee. The card of R. H. Hysell is marked with an "X" and is witnessed by Union Organizer Spitzer. Although Respondent presented evidence, which I credit, that Hysell can and does print his name, there is no evidence that he can write it. I also note that he was still employed by Respondent at the time of the hearing but was not called to deny Spitzer's testimony. Accordingly, I credit Spitzer's testimony and find that Hysell placed his "X" on the card as described by Spitzer. Kenneth Adkin's card is clearly dated January 19, 1965. Hysell's "signature" was the only one challenged by Respondent.

APPLICATION

Food Store Employees Union, Local # 347

P.O. Box 2751

Charleston, W. Va.

The undersigned hereby authorizes this Union to represent his or her interest in collective bargaining concerning wages, hours, and working conditions.

Employer's Name

Your Name

Employer's Address

Your Street Address

City and State

Date¹³ Your Telephone Number

Although Respondent asserted in its January 26th letter to the Union that it had been "advised of instances of direct misrepresentation in obtaining employee's signatures" on the cards, it introduced not a scintilla of evidence at the hearing in support of its assertion. And Respondent's witness, employee Rush Moore who did not sign a card, testified, "Of course, I knowed, you know, that all the guys, you know the biggest majority of them was for it." Moore is not a supervisor and his knowledge is not attributable to the Company. However, his testimony clearly reveals that he was aware of no conduct by the Union which caused him to believe that the employees who signed cards did so because of misrepresentations or pressures or for any other reason than the one stated on the card, i.e. that they wanted the Union to represent them in collective bargaining.

Furthermore, there is no evidence that, with one possible exception, any of the employees who signed cards

¹³ In some cases, the date appears in the right-hand column and the line for the employee's telephone number is omitted.

changed his mind later. On the contrary, there is evidence that a substantial number of them, perhaps all but three, attended a Union meeting in April. (See *infra*.)

D. Respondent's questioning of and statements to the employees

As noted *supra*, there was an unsuccessful Union campaign among Respondent's employees in 1960-1961.

In September, 1964, employee Jerry Lee Frye was in the office on business and Vice President Charles Gissel told him to shut the door and then asked if anyone had talked to Frye about the Union. Frye said "No" and Gissel told him, "Well, if you do or if I think you're talking to a stranger, that is a Union man, . . . I will fire you right now."¹⁴ During the same period, Charles Gissel saw employee Herbert Mount, Jr. talking to a loan company representative at the plant and asked Mount if the man was a Union representative, stated that he did not believe that the man was from a loan company, and told Mount that employees "caught talking" to a union representative would be "fired."¹⁵ Frye and Mount signed

¹⁴ Frye impressed me as a forthright and reliable witness and I have credited his testimony generally. Gissel finally defied having made any such statement after asking, "Why should I . . . there was no union campaign going on back then." Gissel's testimony indicates, however, that he was aware of a campaign by the same Union in the summer of 1964 at the plant of another, Huntington packing company, S. S. Logan Packing Co. A hearing was held in the summer of 1964 in a case involving that Company arising out of a charge filed by the same Union, *S. S. Logan Packing Co.*, 152 NLRB No. 40. A hearing was also held in Huntington on September 8 and 9, 1964 as the result of an unfair labor practice charge filed against a third local packing company by the same Union, *Sehon Stevenson & Co., Inc.*, 150 NLRB No. 64. In short, it is probable that Gissel knew that Union representatives were in town in the summer and fall of 1964. Gissel's testimony discloses that he talked to one of the Logans about the Union sometime in 1965. And a joint union meeting of Gissel, Logan, and Sehon Stevenson employees was held in April, 1965.

¹⁵ It often required a number of questions before Gissel denied having asked the questions or made the statements attributed to him by witnesses called by the General Counsel. See, for example, the following:

[Footnote continued on page 266]

Union cards in January, 1965, attended a Union meeting on April 17, and were discharged on April 22. (See *supra*).

As set forth *supra*, 31 employees signed cards between January 18 and 22, 1965 and on the latter date, the Union told Charles Gland that it represented a majority of the employees and requested bargaining.

In the early part of February, employee Frye heard Charles Gland ask employee Rush Moore, who does a "little bit of everything" and works all over the plant, if he knew or had heard anything about the Union, if any Union men had been around to sign him up. Moore answered "No" and Gland then asked Frye if he knew anything about employee Don Kidd and asked Moore if he knew whether or not employee Don Kidd was the "leader of the Union." Moore again answered, "No," whereupon Gland said that he would fire Kidd "right there" if he found out "for sure" that Kidd was the "leader." 18

— (Continued) —

Q. (By Mr. Jenkins) Back in September of 1964, Frye testified that in the office you asked him about the Union and made the statement to the effect that you would fire him if he had anything to do with the Union.

Did you make any such statement to Frye back in September of 1964.

THE WITNESS: Why should I, Your Honor, there was no Union campaign going on back then.

TRIAL EXAMINER: Answer the question.

Q. (By Mr. Jenkins) Would you answer my question?

A. Well, like I said, there was no union campaign going on back then.

Q. Then you did not have any conversation with him like that?

A. No.

During trial that Gland made the above statements in September, 1964, I find that Gland told Mount in 1963, i.e. shortly after he was hired, that the shop was non-union and employees "caught" talking to a Union representative would be discharged. Of course, this statement has been considered only as background. See *N.L.R.B. v. Clegg-Satchwell Electric Cooperative*, 337 F.2d 574, 574-575 (C.A. 8).

"I do not credit Mount's testimony that, during the same period, he heard Gland tell one of the Company's suppliers that "maybe the Union was doing them a favor, that they could cut the slaughter

Although I doubt Mount's reliability in some respects, after serious consideration, I have credited his testimony that, during the same period, he heard Charles Gissel ask Moore "to find out all he could about the Union, who had signed cards, to report back to him." My decision to credit Mount's testimony in this respect and to discredit that of Gissel and Moore is based in considerable part upon Gissel's answer when questioned about the statement attributed to him by Mount.¹⁷ I have also considered Moore's testimony which discloses that the employees were reluctant to talk in his presence. In Moore's words, "Whenever, I walk around the plant if anybody is talking they all shut up and walk away from me." Finally, the

house out . . . and have their meat shipped in." Although employee Kenneth Adkins testified that he heard Gissel say that it would be cheaper to have the meat shipped in and "get rid of most of the men in the back" Adkins stated that Gissel did not mention the Union during his conversation with the supplier. Gissel testified that the suggestion that the Company buy dressed hogs had been under consideration for 4 or 5 years. It is possible, of course, that the idea originated at the time of the 1960-1961 Union campaign. However, I do not find that Gissel indicated in his conversation with the supplier that the Company might close part of its operations because of the Union. In this case, Gissel's testimony was definite and clear. In a number of cases, Gissel was asked only if he "remembered" or "recalled" having made the statements attributed to him.

¹⁷ When asked the following question by Company counsel, Gissel gave the following answer:

Q. Now . . . the testimony of Mr. Mounts was that you asked Rush Moore to find out about the Union and report back to you.

Did you ever make that statement to Mr. Moore?

A. Let me put it this way.

During the time we had this Union trouble or however you want to put it, a Government man who handled the election . . . cautioned us not to comment, not to mention the Union at all.

He said when any of the employees mentioned [the] Union, not to say anything.

When any employee did mention the Union, I walked away.

There are too many such answers for me to believe that they were unintentional. (See *infra*.)

admitted presence of a member of the Gissel family at a hotel just before a Union meeting in April (see *infra*) convinces me that the Company set out to learn the identity of the pro-union employees.

The afternoon after the Gissel-Moore-Frye conversation, Gissel asked Frye if he knew anything about the Union and Frye answered, untruthfully, that he did not. Gissel then wanted to know, "What did they offer you?" When Frye said that "they" did not offer him anything, Gissel told him, "I can offer you more than . . . they can."¹²

Tommy Lee Burchell, who was employed by the Company at the time he testified, heard about the Union from another employee shortly after he was hired. About a week after he began working, he talked to employee

Frye testified that he was interviewed at the plant by Respondent's attorney who said "something about he was from Cincinnati—had something to do with the Labor Board" or "was working [on] something about the Labor Board." Although I am convinced that Frye so understood Jenkins' statements, I credit the latter's denial that he identified himself as connected with the Board. However, Jenkins did not testify about what he said exactly and I do not doubt that he mentioned the Labor Board and Cincinnati, where the Board's Regional Office is located. Jenkins testified that he introduced himself and a court reporter but could "not recall" whether or not he told Frye that he was the attorney for the Company. Nor could Jenkins "remember" whether he told Frye that he was "working for Gissel Packing Company or not," adding, "It is my recollection that I did but I am not sure that I did." He stated that the reporter "reduced to writing" every word that was said, including his "introduction", and admittedly had a copy of the transcript. However, he refused the Union representative's request that he produce it. Under these circumstances, I am convinced that Jenkins did not make it clear that he was an attorney for the Company. There were other cases of "mistaken identity" such as employee Adkins' belief that a Board representative was a Union representative. Nor am I impressed by Frye's inability to recall the name of the Union, i.e. Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. I have also considered Frye's inability to find the notes he made. No one had instructed him to keep the notes and they were in a little book which, unlike the checkstubs in the same box, could be used for some other purpose and disappear without intent to destroy the notes. If Frye wanted to conceal the notes, he had only to deny having made them.

Mount on break-time.¹⁹ When Burchell went back to work, Charles Gissel took him to the second floor and asked him where he met Mount. Burchell said that he had met Mount through the latter's wife. Gissel also asked if Mount said anything to Burchell about "a Union." Burchell answered in the negative and Gissel told him that Mount would be "bad" for him and that Burchell should stay away from Mount. In crediting Burchell's testimony I have considered Charles Gissel's testimony that Company Counsel Jenkins and Mr. Logan of the Logan Packing Company advised him "to watch the men coming in because the Union usually put men in to make trouble."

In April, Burchell stopped to talk to employee Lawrence Hysell who owned him some money. Burchell made a note of the amount and a few minutes later, Charles Gissel stopped Burchell and asked if Hysell was trying to get Burchell to go to a Union meeting or to sign a card. Burchell answered in the negative.

Employee Elmer Maynard was still employed by Respondent at the time of the hearing. He signed a Union card in January and Gissel asked him on one occasion if he was going "to walk out" if the others did.²⁰ (The

¹⁹ Burchell testified (in August) that he had been working for the Company "about seven months or a little longer." At another point, Burchell testified that he began working in February and that the above conversation was in February. However, Respondent's records indicate that Burchell was not hired until the first week in March. His inability to recall exactly when he was hired does not cause me to discredit his testimony. I also note that Burchell waited until May to sign a Union card which suggests that he was not sufficiently pro-union to risk his job by testifying falsely against his employer.

²⁰ Maynard's pre-hearing affidavit dated February 24, 1965 does not state that Charles Gissel asked him if he had been "brainwashed" and I do not credit his testimony in this respect. Although Maynard testified that Gissel asked him about "brainwashing" on several occasions, and the questions may have asked after he gave the affidavit, I am unwilling to so find. Maynard also testified that when Mount was discharged in February, Gissel told Mount that he did not "give a damn about the Union, he could stick it — — —." However, I think Maynard was mistaken about the date and that Gissel made the statement when he discharged Mount and Frye in April. (See *infra*)

Board's 1961 Decision and Direction of Election indicates that there had been an economic strike sometime earlier.)

Elisha Watts, who disclosed that he was strongly pro-union, had been hired and fired a number of times over a period of 8 years. In February, he heard Charles Gissel tell a group of employees, "The hell with the Union . . . I'm going to leave [the plant] and turn it over to them." On a later occasion, Watts heard Vice President Herbert Gissel say in the presence of several employees, "I don't want to hear anymore about this Union stuff. If you can't do your work, ket out."²¹

Kenneth Adkins, who was employed by the Company at the time of the hearing, signed a Union card in January. During that month, he heard Charles Gissel say that "If the Union got in, he'd just take his money and let the Union run the place the way they wanted to." Also in February, Adkins heard Vice President Herbert Gissel "bawling out" Watts and tell him that the Union was not going to "get in", that it would have to "fight him first."²²

The notice posted by the Company in February stating that no one except Secretary-Treasurer Closterman was authorized to express the Company's views on Union matters has been considered in determining whether the two Gissel vice presidents engaged in the conduct attributed to them. The notice suggests that Vice President Charles Gissel, whose name is signed to the notice, was seeking "to have his cake and eat it too," i.e. to make illegal statements and to avoid responsibility for them by posting a self-serving notice. It would surely require more than a notice of this type to convince employees that the actions

²¹ Watts was discharged about May 1, 1965. He admitted on direct examination that he did not hear Vice President Herbert Gissel say that he knew that Watts was "head" of the Union. This is not the testimony of a witness who was willing to testify falsely in order to establish a case against his employer.

²² Herbert Gissel admitted that he gets "mad" and that both the Gissels and the employees engage in "yelling and cursing." Having considered his demeanor and his testimony as a whole, I cannot credit his testimony that he "never talked about the Union in the plant," testimony which he himself refuted later.

of two vice presidents did not reflect Company policy. It would also be a naive employee who would submit written reports to Secretary-Treasurer Closterman concerning the things being said by Vice President Charles Gissel and Vice President Herbert Gissel.²³

E. The Company's conduct in connection with a Union meeting on April 17

A Union meeting was scheduled for Saturday afternoon, April 17, at a local hotel, for employees of three Huntington packing companies, i.e. Gissel, Logan, and Sehon Stevenson. On Thursday before the meeting, employee Frye heard Charles Hutchison, a member of the Gissel family, tell Charles Gissel that there was going to be a Union meeting on Saturday and ask Gissel if he knew about it. Gissel said that he did and that "there would be somebody there watching to see who all went in." Mount and Frye worked in the shipping department under Charles Gissel's supervision and Mount also heard the Gissel-Hutchison conversation.²⁴

The meeting was held as scheduled and it is undisputed that Terry Lewis, the grandson of President Gissel, the son of Vice President Edith Gissel Lewis, and a nephew of Vice Presidents Charles Gissel and Herbert Gissel, was at the hotel as the employees were arriving for the meeting and was heard making a telephone call to his aunt, Secretary-Treasurer Alfreda Closterman, at the plant.

Lewis is a high school student who works only part-time. He testified that he saw a notice at the plant about the meeting and that it stated that there would be a meeting of "all employees" of Gissel, Logan Packing Company, and Sehon Stevenson, at 2 p.m., Saturday at a Huntington hotel. He did not claim that no member of management knew that he was going to the hotel and asserted that he decided to go to the meeting but "changed his mind" because he was "afraid of the employees; so

²³ All references herein to an individual Gissel are to Charles Gissel unless stated otherwise.

²⁴ In discrediting contrary testimony, I have considered, *inter alia*, that Terry Lewis was at the hotel before the meeting. See *infra*.

—I figured they would say something about it." He was asked the following questions by Respondent's counsel and gave the following answers:

Q. What made you worry when you got down there?

A. I figured I didn't have a right to be there really because—

Q. Well, did anybody say anything or do anything that [led] you to that conclusion; *did they give you any funny looks or anything?*

A. Elisha Watts made a smart remark, he asked me what I was doing down there and gave me a dirty look.²⁵ (Emphasis supplied.)

Lewis admitted that, after calling his girl friend, he called his aunt, Secretary-Treasurer Alfreda Closterman, at the plant, told her where he was, and that she told him "to come on back," (It was Saturday afternoon and Lewis did not explain why Mrs. Closterman told him to come to the plant.) He also testified that he really called Mrs. Closterman to find out whether his mother, Edith Gissel Lewis, was at the plant but he "was so scared" that he did not ask Mrs. Closterman about his mother. At another point, Lewis said, "I didn't want to go down there in the first place" but he later claimed that he wanted to go "at first" but changed his mind when he saw the employees. He said he was scared because employee Watts "made this face" and invited him to a "beer joint" with a bad reputation.²⁶ He later admitted that he was in the phone booth when Watts made the "face."

Although Mrs. Closterman was a witness for Respondent, she was not asked about Lewis' telephone call, i.e. what he said and what she said. Charles Gissel asserted

²⁵ Lewis was asked, "What is a dirty look?" and answered, "He made a face Just an ordinary face."

²⁶ Much later, Lewis said that Watts accused him of stealing a coat and stated that he would get a warrant. Vice President Herbert Gissel admitted that he did not know what was meant by a "dirty" look.

that neither he nor any other Company representative "sent" Lewis to the meeting but no other member of the Company denied having sent Lewis to the hotel. And no Company representative, including Charles Gissel, denied knowledge that Lewis was going to the hotel.

Lewis was a very uncomfortable witness who frequently had difficulty in recalling what had gone on. When asked if he gave a report on the employees who attended the meeting, Lewis answered, "I don't remember what I said to her [Alfreda Closterman], I just told her I was up there and she told me to come on back."²⁷ On cross-examination, he repeatedly answered question with such statements as, "I don't remember."²⁸

Having considered the entire record, I am convinced and find that, as Lewis testified at one point, he did not want to go "down there," that he did not go on his own initiative, and that he did not go without prior Company knowledge. If no member of the Gissel family sent him to the hotel and none knew that he was going, they would surely have so testified but none did except Vice President Charles Gissel who stated only that no one "sent" Lewis to the hotel. Similarly, no management representative claimed that Lewis did not report the names of the employees he saw at the hotel.

On the basis of the foregoing facts, I find that Lewis was sent to the hotel for the purpose of learning the identity and number of employees who attended the meeting and did report which employees he saw there.

As stated *supra*, Lewis' presence at the hotel is a major reason why I have discredited the testimony of Charles Gissel and others that the Company did not engage in any

²⁷ Lewis did say that he did not report on what went on at the meeting but there is no claim that he attended the meeting.

²⁸ The record discloses that employees, other than the two whose discharge is an issue in this proceeding, were discharged. When Lewis was asked on cross-examination if he had told an employee that the Company was "getting rid of the people one by one," he answered "What, I mean, not as far as I can remember, no." Upon being pressed on the point, Lewis gave answers such as, "I don't remember, sir", "I say, it is not as I can remember", and "I don't remember saying it."

conduct violative of the Act. As noted above, Charles Gissel repeatedly sought to "prove" his testimony by asserting that the Company had learned its lesson during the 1961 election and the previous unfair labor practice proceeding. However, the presence of Lewis corroborates and lends credence to the testimony of the witnesses for the General Counsel, especially that which indicates that Respondent sought, by questions and other means, to find out which employees were involved in the Union campaign.

According to employee Elisha Watts, all "but three" Gissel employees attended the meeting.

Lowell W. Bailey, who signed a card in the presence of Union Representative Spitzer, was a witness for Respondent. He did not deny having signed the card nor did he claim that he did so as the result of any kind of pressure or misrepresentation. Bailey was clearly unhappy because management had learned that he had signed a Union card, pointing out that the "two guys" who signed him up said that the Company would not know who signed cards. He said also that "they made it sound easy" and that he "would make more money." He went on to say that the Company knew he had signed a card but did not say how it learned that fact. Bailey also failed to explain the circumstances under which he told Vice President Herbert Gissel that he attended the meeting but he conceded that he also told Gissel that he was not having anything to do with the Union "now." However, Bailey refused to say that he was in fact "against the Union."

As a witness for Respondent, he was asked by Company counsel, "The question, Mr. Bailey, is what did [the speaker at the Union meeting] say down there on the subject of what you all were to do at the various companies; what was said?" Bailey answered, "He was talking about breaking glass in a parking lot and nails or something in a parking lot, sir." However, Bailey admitted that he did not know whether the broken glass and tacks happened "in Charleston or Parkersburg or where it was." According to Bailey, sometime after the meeting, he "figured" that the Union wanted Gissel employees to commit similar acts at the plant. Bailey added that the speaker said something about men working during a strike and that the Union "was going in and get them."

Bailey's demeanor convinced me that he was a witness under pressure to give answers consistent with the questions and I do not believe that his "interpretation" of the remarks at the meeting originated with him. Under these circumstances, I cannot find that the speaker made any statements which could reasonably be interpreted as a suggestion that the employees present break glass or scatter tacks at the plants where they worked.

F. The allegedly discriminatory discharges

Herbert Mount, Jr., began working for the Company in April, 1963 and Jerry Lee Frye was hired in June, 1963. Both worked in the shipping department which is supervised by Charles Gissel. Each signed a Union card and each was questioned by Gissel who also told them that employees engaging in Union activity would be discharged. Both attended the Union meeting on April 17 where they were seen by Terry Lewis.

Mount and Frye normally worked from 6 a.m. to 5 p.m. or later. On Monday, April 19, they left the plant at 11:30 a.m., the beginning of the lunch period. As they passed Charles Gissel's car, he was sitting in it listening to the livestock market report and he asked them to wait a few minutes. After a short wait, Gissel asked Mount if he went to the Union meeting, Mount answered in the negative, but Gissel said he knew Mount was at the meeting, adding that he had been seen there, that "Someone told me you were there." Mount then admitted that he was at the meeting and Gissel told the two men that there were going to be "different arrangements made around here" and that Mount and Frye were to work from 5:30 a.m. to 11:30 a.m. "until further notice."

As per instructions, Mount and Frye did not work Monday afternoon and did not work Tuesday afternoon. Apparently, they helped Mount's father-in-law on a sewer job on Monday afternoon for Eddie Lewis, the assistant foreman of the department and Charles Gissel's nephew, said he thought that Mount said Tuesday morning that he had worked for his father-in-law the previous afternoon and had made "some money, twenty dollars. I would say, I am pretty sure." There is no claim that the men violated

any rule by working elsewhere Monday and/or Tuesday afternoon.

On Wednesday afternoon, Mount and Frye did not return to work after the lunch break and they in fact did some work for Mount's father-in-law. Vice President Charles Gissel sent Lewis, Supervisor Carley and employees Daniel Ellis and Rush Moore to obtain "evidence" that Mount and Frye were working elsewhere.²⁰

When Mount and Frye got to work at 5:30 a.m. on Thursday, April 22, their timecards were not in the rack and they went to the office and asked Charles Gissel about their cards. Gissel told them that their cards had been "pulled" because they had "walked off the job" the day before. Frye denied that he and Mount had walked off saying that Gissel had not told them to work Wednesday afternoon. Gissel said that they should have known that they were supposed to work Wednesday afternoon but Frye told him, "No, we shouldn't have knowed You told us Monday that we would work from 5:30 till 11:30 'til further notice. . . . You didn't tell us no different." Gissel only repeated that the men "should have knowed" to work Wednesday afternoon. (Mount's and Frye's testimony concerning this conversation is undenied.) Gissel then told the men to get out, that he was going to "call the law." (Gissel claimed that he threatened to call the law after the men "got to raising hell." However, he did not quote what the men said.) As they were leaving, Gissel told them, "You all take that Union and stick it — — —."

Respondent contended at the hearing that Mount and Frye were not discharged but "quit," i.e. left Wednesday afternoon to go to work on another job. But it is not alleged that Mount and Frye had "quit" by working on the sewer job Monday and/or Tuesday afternoon and I do not find that they "quit" by failing to work Wednesday afternoon. They were only following instructions and, as they

²⁰ It seems unlikely that Gissel could have talked to Mount's father-in-law on the telephone, as he claimed, because the father-in-law was digging a sewer. But even assuming that Gissel talked to the father-in-law, I find that the latter said nothing which caused Gissel to believe that the two men had gone to work for him permanently.

had done on Monday and Tuesday afternoon, they spent some of the time helping Mount's father-in-law. (For some reason, Respondent seemed to consider it necessary to establish that it took no action against the men and, in effect, denied that they were discharged "for cause" on Thursday morning.)

One of the basic questions to be decided in connection with the discharges is one of credibility, i.e. whether Mount and Frye were told to work mornings "until further notice," as they claim, or whether they were told to work Monday and Tuesday mornings and all day on Wednesday, as claimed by Charles Gissel. As set forth previously, I have credited the testimony of Frye which is corroborated by Mount.

In addition to the reasons noted previously for doubting Mount's uncorroborated testimony, I would also hesitate to credit his testimony concerning his instructions about his work schedule for the week beginning Monday, April 19, because of his work record. Thus, he was admittedly late for work a number of times although the record does not reveal how many times.⁸⁰ In January or February, 1965, Mount probably caused additional damage to a truck by driving it after it developed engine trouble. He also failed to put some hams in a pan although he claimed, perhaps truthfully, that he had not been told to do so. Furthermore, he was 2 days late returning to work after a vacation in February, probably in part because he had a temporary job elsewhere at which he could earn more than the

⁸⁰ Gissel asserted that Mount was on time "only five or six times" between November, 1963 and April 22, 1965, i.e. in a period of at least 5 months. He also claimed that Mount was always late "from five minutes to forty-five minutes to an hour." Assistant Foreman Eddie Lewis testified only that Mount and Frye were late "pretty often." Although he first said they were late "a half an hour, or an hour, or a couple of hours," he admitted that he could not say "exactly two hours." However, their timecards were not introduced into evidence. Moreover, in a letter to Mount on February 19, 1965, Secretary-Treasurer Closterman stated only that "... you have been regularly late on a number of occasions," a statement which surely does not indicate that he was virtually never on time, as claimed by Gissel. I am convinced, therefore, that Gissel's testimony in this respect is greatly exaggerated and this conclusion is another reason why I do not credit his unsubstantiated testimony.

\$1.25 an hour he was paid by Respondent. On another occasion, he did not "shake hides" when requested, or perhaps ordered, to do so. (Shaking hides is a dirty job and the employees hired for the purpose had quit. Moreover, Mount had already worked 8 or 10 hours that day.) In short, I could believe that Mount might have used his "lay off" on Monday and Tuesday afternoon as an excuse for not working Wednesday afternoon if he could have earned more money that afternoon by working elsewhere.²¹ In fact, Mount was discharged in February but was recalled because, according to Charles Gissel, he believed that otherwise an unfair labor practice charge would be filed. Gissel also asserted that Mount would have been discharged on another occasion but for the probability of an unfair labor practice charge.

Frye, however, had no such record. He had never been discharged and there is no claim that the Company had ever even considered discharging him. Although Gissel gave a summary statement concerning complaints against Frye, he did not give details or specify times, and his claims are not substantiated by the record generally as they are in the case of Mount.²² This is not to say that Frye had never done anything for which he could have been criticized but there is nothing in the record which indicates that he was the type of employee who would have failed to work Wednesday afternoon if he had been told to do so. As a matter of fact, Gissel said that he was "surprised" when he learned that Mount and Frye were ab-

²¹ As noted *supra*, Lewis was unsure of the amount Mount claimed to have earned Monday afternoon.

²² One of Gissel's claims was that Frye rode with Mount and was, therefore, late virtually every morning. However, Frye's timecards were not introduced into evidence. Gissel also said that Frye "could read a bill as well as I could and he would come to the office there for me to read the bill for him. He would not pack the meat good in the boxes and he would not put the paper in them and sometimes he would stack them on the flat truck and leave them on the trucks, then the load would spoil." It was also claimed that Frye, like Mount, refused to "shake hides." However, it is not clear that Frye actually refused an order to shake hides. (See the testimony of Eddie Lewis who gave the orders. Gissel admittedly was not present.)

sent, "Because they had never pulled a trick like that before."

An additional reason for crediting the employees' testimony is provided by the fact that Respondent's testimony concerning Mount's and Frye's work schedule and instructions is neither clear nor consistent. According to Charles Gissel, work had been slow for some time and he decided to have some men work Monday and Tuesday (and perhaps Friday) mornings and others work afternoons on those days, to even up the work because "some were getting more time than others."³³ All of the employees were to work all day Wednesday and Thursday, Gissel said, these being the busy days.

Gissel stated that he had been working on the "new" schedule for two weeks and although it had not been set up "completely at that time," some men had worked half days the week before. At another point, Gissel was asked by Company counsel, "In fact, there was—*In fact [Mount's and Frye's] work schedule was not changed, was it?*" and he answered, "No." (Emphasis supplied.) However, no records in support of these statements were introduced.

On the other hand, Eddie Lewis, the assistant foreman of the department and the nephew of Charles Gissel, apparently knew nothing about a decision to set up a split schedule and clearly refuted Charles Gissel's testimony that the split schedule was in effect, at least to some extent, the week before. Thus, when questioned by Company counsel about the work schedule, he answered:

They were *working full weeks* but at that time the business, I think, had slacked off and they were *sent home a half day early* the day [Mount] had made the twenty dollars . . . [i.e. Monday, April 19] (Emphasis supplied.)³⁴

³³ Gissel did not explain why he decided to split the work day instead of having all of the employees come in and work the same number of hours with everyone leaving when the day's work was done. This appears to have been the custom in the past. There is no evidence that any employee benefited by the change.

³⁴ At another point, Lewis said that the men had been "let off" at 11:30 a.m. on previous occasions but he would not even estimate

The schedule, Gissel further asserted, applied to three men besides Mount and Frye, i.e., Assistant Foreman Eddie Lewis, supervisor Simon, and employee Maynard. But if Lewis worked half days either the week of April 19 or the week before, he did not say so at the hearing. In fact, it is clear from Lewis' testimony that he had heard nothing about a change in his schedule.³⁵ Simon, who worked in the same department, was also a witness and said nothing about a "new" schedule for himself or anyone else.

Maynard who, like Mount and Frye, attended the Union meeting on April 17, claimed that he was told to and in fact did work afternoons the week of April 19 until after Mount and Frye were discharged, i.e. through Wednesday. Although Maynard was not sure of the dates, Respondent was well aware that the General Counsel was claiming that Maynard did not work Wednesday morning and that Maynard's testimony was offered to support Mount's and Frye's assertion that their instructions to work half days likewise applied to Wednesday as well as to Monday and Tuesday.

Charles Gissel also recognized that the Company's case, i.e. that he told Mount and Frye to work all day Wednesday would be strengthened if it could be established that Maynard understood that his instructions to work afternoons did not apply to Wednesday. Accordingly, he stated emphatically that Maynard was wrong, that he worked all

when that had happened. As Lewis put it, "I could not say to that, just that he had, in the weeks before *maybe*, just laid them off a half a day." (Emphasis supplied.)

³⁵ When Lewis was asked on cross-examination, "At the same time [Mount and Frye] were told to come in at 5:30 and work until 11:30, there were others . . . who were told to come in at 12:00 and work until some time in the afternoon, were there not?", he answered, "I don't know about that. I know about they were told to come in at 5:30 and work until I don't know when." Lewis also said, "I don't think they were told to work from 5:30 to 11:00. I think they were told to go ahead, the way it is usually done, they tell them when to come in and then if the work is slacked up, they are told then to leave." After a leading question on redirect examination, ("There were two others, were there not?"), Lewis said that the schedule "worked out" for Mount and Frye also applied to Maynard.

day Wednesday and that his timecard would prove it. However, Maynard's timecard was *not* introduced into evidence even though there had been ample time to obtain it, due to a 10 day adjournment, and Respondent in fact introduced other records into evidence the same day that Gissel testified. Cf. *N.L.R.B. v. Collins & Aikman Corporation*, 146 F.2d 454, 456, (C.A. 4). And Assistant Foreman "Eddie" Lewis could not and did not say that Maynard worked all day Wednesday.

I am convinced that Maynard's card was *not* introduced because it would have established that, as I find, he worked Wednesday afternoon only, a fact which adds support to the General Counsel's claim that Mount's and Frye's instructions to work mornings also applied to Wednesday. Cf. *Interstate Circuit v. U. S.*, 306 U.S. 208, 225-226; *N.L.R.B. v. Condon Bros. Mfg. Co.*, 187 F.2d 329, 332 (C.A. 7); *N.L.R.B. v. A.P.W. Products Co.*, 316 F.2d 899, 903 (C.A. 2); *N.L.R.B. v. Wallick*, 198 F.2d 474, 483 (C.A. 3).

In addition, Gissel's testimony concerning his instructions to Mount and Frye is far from precise. Thus, his testimony on direct examination was as follows:

Q. Now, had Mounts and Frye been told or had they not been told as to their hours of work on Wednesday and Thursday?

A. Right.

Q. They had been told?

A. Right.

Nor did Gissel say on direct examination when or where or under what circumstances he told Mount and Frye about their new hours. He was asked on cross-examination when he told Mount and Frye about their new schedule and first said "on Monday morning", which would have been after they attended the Union meeting and had been seen by Terry Lewis. The question was immediately repeated and Gissel answered, "Every Friday, we were laying off at noon on Friday and I would send them home on Tuesday and sometimes on Monday; but never on Wednesday or Thursday."

Finally, Gissel did not deny the testimony of Mount and Frye that when they insisted on Thursday morning that

he had not told them to work all day on Wednesday, Gissel replied only that they should have known they were supposed to do so. In other words, Gissel did not claim that he told the two men on Thursday that he had given them explicit instructions to work all day Wednesday and Thursday.

Gissel, an intelligent and experienced business man, revealed that he expected that a unfair labor practice charge would be filed. Under these circumstances, he should have been able to give a detailed account, in his own words, about what he told Mount and Frye. However, he gave few answers on direct examination in which he independently described what actually happened. Instead, much of his testimony consisted of affirmative or negative answers to what amounted to statements by Company counsel.³⁶ Moreover, Gissel's assistant and nephew, "Eddie" Lewis, should have been able to corroborate Gissel's testimony concerning the new schedule which, allegedly, also

³⁶ Questions of this type include the following: "Then you did not have any conversation with [Frye]" as described by Frye; "In fact [Mount's and Frye's] work schedule was not changed, was it?"; "I will ask you whether or not I told you . . . that it was a method of this Union . . . to put people in the plant to make statements and misquote you; did I not warn you against this eventuality?"; "Now, had you been working on this schedule for some time or not?"; "You asked me how long you had to put up with [Mount's work habits] did you not?"; "Now, had you been working on this schedule for some time before that, or what?"; "You asked me how long you had to put up with this, did you not?"; "Was [Union Representative] Spencer or was he not insisting that these peddle drivers . . . be in the unit?"; "This was not your first trouble with Mounts, was it?"; Other witnesses were asked similar questions, among them: "There were two others [affected by the schedule change] were there not?"; "Now about [January or February] . . . did you have any problems with any vehicles that were operated by Herbert Mounts . . ." When the Examiner asked one witness about a date, counsel answered, "I said in January . . ."; "If an employee had wanted to put sand [in the oil] would it have been possible; was it open in such a way that they could have gotten in there?" ". . . did they give you any funny looks or anything?"; "What did the [Union Representative at the April 17 meeting] say with respect to things that you were supposed to do at the various companies?"; "Did he make any threats to you, did he threaten to beat up on you, did he do anything like that or make any statements that you would object to?"

applied to Lewis himself. Instead, it is clear that Lewis knew nothing about the schedule changes which are basic to Respondent's case and which Respondent sought to establish by Gissel's testimony. If the schedules for the week of April 19 and the previous week were those alleged by Gissel, Respondent should have been able to produce records which would have proved that the schedules were those described by Gissel. However, no records were introduced.

In short, my conclusion that Mount and Frye were told to work mornings "until further notice" is based in considerable part upon the failure of the testimony of Respondent's witnesses to withstand scrutiny and the absence of documentary evidence which was available and which, I am convinced, would have been produced if it would have supported Gissel's claims, including his assertion that Maynard worked all day Wednesday.⁵⁷

G. Analysis and conclusions

1. Respondent's conduct which violated Section 8(a) (1) of the Act

In this case, it was chiefly Vice President Charles Gissel, not a minor supervisor, who questioned the employees in an effort to learn the identity of the Union adherents and frequently, in the same conversations, threatened the immediate discharge of employees who were found to be involved with the Union. In addition, Gissel's remarks were clear and unequivocal and were followed by action consistent therewith. For example, he announced that a Union meeting would be kept under surveillance and Terry

⁵⁷ Even had I found that Gissel did not use the words "until further notice," having considered, *inter alia*, Mount's and Frye's undenied testimony concerning Gissel's statements on Thursday morning and the generalized nature of Gissel's testimony about what he told them originally, I would have found: (1) Gissel did not tell them to work all day Wednesday but assumed that they understood that the half-day schedule did not apply to Wednesday because they knew that it was a busy day; and (2) that Mount and Frye honestly believed that Gissel's instructions to work mornings meant that they were to do so until notified otherwise.

Lewis was in fact at the hotel and placed a telephone call to Secretary-Treasurer Closterman at the plant. Moreover, Gissel's conduct was not limited to one or two remarks but continued off and on from early September, 1964 into the third week in April, 1965 and coincided closely with the periods of known or suspected Union activity.

Having considered Respondent's questions, statements, comments, and actions "in connection with the position of the parties, with the background and circumstances in which they were made, and with the general conduct of the parties," I find that the acts set forth below were "part of a general pattern or course of conduct" which interfered with, restrained, and coerced the employees in violation of Section 8(a)(1) of the Act. *N.L.R.B. v. Kropp Forge Co.*, 178 F.2d 822, 829 (C.A. 7), certiorari denied, 340 U.S. 810.

1. Vice President Charles Gissel's questioning of employee Jerry Frye in September, 1964 about whether anyone had talked to him about the Union and his statement in the same conversation "... If I think you're talking to a stranger, that is a Union man ... I'll fire you right now." And Gissel's similar questioning of and statement to employee Mount, also in September, 1964.

2. Charles Gissel's order to employee Rush Moore in February, 1965 "to find out all he could about the Union, who had signed cards, [and] to report back to him."

3. Charles Gissel's interrogation of employee Moore, in the presence of employee Frye, concerning what he knew or had heard about the Union, about whether a Union representative had tried to sign Moore up, his asking if employee Frye knew anything about employee Don Kidd, his questioning of Moore about whether Kidd was the "leader of the Union," and Gissel's statement, in the same conversation, that he would fire Kidd promptly if he found out "for sure" that Kidd was the Union leader.

4. Vice President Charles Gissel's questioning of Frye in February as to whether he knew anything about the Union, a question which Frye answered untruthfully, his asking Frye what the Union had offered him and Gissel's statement, "I can give you more than they can." Cf.

N.L.R.B. v. Camco, Incorporated, 340 F.2d 803, 804 (C.A. 5).

5. Vice President and Charles Gissel's asking of employee Burchell, shortly after the latter was hired, i.e. in late February or early March, 1965, about where he met Frye and Gissel's warning, in the same conversation, to stay away from Mount, that Mount would be "bad" for Burchell.

6. Vice President Charles Gissel's statement in February, "The hell with the Union . . . I'm going to leave [the plant] and turn it over to them" and his statement that if the Union "got in", he would take his money and let the Union run the plant the way they wanted to.

7. Vice President Herbert Gissel's statements during the same period, i.e. that he did not want to hear anymore about "this Union stuff," if the employee could not do his work, to "get out," and that he was not going to have the Union "get in," that it would have to "fight him first." Although these statements might not constitute interference, restraint and coercion if they stood alone, their effect must be considered in the light of what had gone before and what came after. See *Daniel Construction Company v. N.L.R.B.*, 341 F.2d 805, 811 (C.A. 4), in which the court pointed out that words which would be lawful if considered separately, can "unite in such a fashion as to yield an improper end product." And the court said in *Hendrix Mfg. Co. v. N.L.R.B.*, 321 F.2d 100, 103-104 (C.A. 5), that in cases in which the Company "makes no bones" about its opposition to the Union, the Board may, "with ample justification . . . regard" statements of "anti-union attitude" as "background" against which, "to measure statements, conduct, and the like made by other management spokesmen, especially in terms of the interpretation which the employees reasonably could put on such actions. More specifically, this would bear on the question whether, from the listeners' point of view, these statements by subordinate management constituted forbidden coercion, threats, or intimidation."

8. Charles Gissel's statement that he would have someone at the Union meeting on April 17 to report on who was there and his statement that Mount had been seen at

the meeting. *N.L.R.B. v. Community Motor Bus Co.*, 335 F.2d 120, 122 (C.A. 4); *Hendrix Mfg. Co. v. N.L.R.B.*, 321 F.2d 100, 104, n. 7 (C.A. 5); *N.L.R.B. v. Prince Macaroni Mfg. Co.*, 329 F.2d 803, 805-806 (C.A. 1).

9. The presence of Terry Lewis, a member of the Gissel family, at the hotel on April 17, as the employees were arriving for a Union meeting, and his call to Secretary-Treasurer Closterman at the plant. In *N.L.R.B. v. Collins & Aikman Corporation*, 146 F.2d 454, 455 (C.A. 4), the court said that "Any real surveillance by the employer over the Union activities of employees, whether frankly open or carefully concealed, falls under the prohibitions of the Act." In view of all of the circumstances, the employees could not fail to believe that Lewis was sent to the hotel to see who came to the meeting and could not fail to believe that he would and did report the names of the employees he saw there. Cf. *N.L.R.B. v. Champa Linen Service Company*, 324 F.2d 28, 30 (C.A. 10). That he in fact did so is established by Gissel's statement to Mount on Monday, when the latter denied having attended the meeting; that Gissel had been told that Mount was at the meeting.

10. Gissel's interrogation of Mount on April 19 about whether he attended the Union meeting, his telling that he was not telling the truth when he answered in the negative, and Gissel's statement to Mount and Frye, in the same conversation, that there would be changes in their working hours.

11. Gissel's statement to Mount and Frye when they were discharged on April 22, about what they could do with the Union. Cf. *Hendrix Mfg. Co.*, *supra*.

2. Respondent's refusal to bargain in violation of Section 8(a) (5) of the Act

As set forth *supra*, the Union filed a representation petition in late 1960 or early 1961, a hearing was held, and the Board issued a Decision and Direction of Election in January, 1961 in which it established the unit appropriate for collective bargaining. It included, over Respondent's objection, the truck driver salesmen or peddlers. There being no claim and no evidence that there had been any change in the status of the peddlers between 1961

and 1965, I regard myself as bound by the Board's 1961 unit determination.³³

Furthermore, as also set forth *supra*, 31 of the 47 (or even fewer) employees in the unit signed cards in mid-January, 1965 which state unequivocally that the "undersigned hereby authorizes this Union to represent his or her interest in collective bargaining concerning wages, hours, and working conditions."

Thus, when Union Representative Spencer notified the Company on January 22 that the Union represented a majority of "eligible" employees, it did in fact represent a substantial majority of the employees in the unit found appropriate by the Board.³⁴ It is admitted, of course, that Respondent refused to bargain with the Union.

At the hearing, the only basis asserted for the Company's doubt of the Union's claim that it represented a majority was Charles Gissel's statement that "We talked it over among ourselves and decided that maybe they might not have a majority" because the Union had lost an election 4 years earlier after having claimed to represent a majority. However, employees are entitled to and at times do change their minds and a similar argument was rejected by the court in *Overnite Transportation Company v. N.L.R.B.*, 308 F.2d 279, 283 (C.A. 4). The court also commented in *Overnite* that the employer "unmistakably demonstrated" that it gave some credit to the Union's claim by embarking upon a course of "illegal" conduct, in-

³³ As the court said in *Florence Printing Co. v. N.L.R.B.*, 333 F.2d 289, 291 (C.A. 4), "Even if the company entertained doubt [about the appropriateness of the unit], is it no defense to a refusal-to-bargain charge where the unit is proper."

³⁴ Although Vice President Charles Gissel stated in his first letter to the Union that the Company did not know who the "eligible" employees were, he did not mention the unit question in his later letters. Moreover, at the hearing, Gissel disclosed that the only question concerning the unit was that raised by the inclusion of the peddlers. He also made it clear that he recognized that the Union's reference to "truck drivers" in its letter referred to peddlers rather than to its regular employees, some of whom occasionally drive trucks locally. In other words, Gissel understood that the Union was requesting the Company to bargain for the employees in the unit established by the Board in 1961.

cluding interrogation and speeches. Such conduct, according to the court, constituted an "absolute refutation" of the Company's good faith claim.

Further proof that Respondent was willing to assert unfounded claims to justify its refusal to bargain is provided by its statement in its letter of January 26 that it had been "advised of instances of direct misrepresentations" used by the Union to obtain signatures on the cards. At the hearing, however, Respondent introduced not a scintilla of evidence that the Union had made misrepresentations to the employees or had obtained the signatures by any other method which might create a doubt about whether the employees signed the cards for any reason other than that they desired Union representation.

It is also significant that Respondent did not file its own representation petition with the Board as it is empowered to do by the Act. It would surely have been quick to do so if it had good reason to believe that the Union could not establish its majority in a Board-conducted election. Cf. *Florence Printing Co. v. N.L.R.B.*, 333 F.2d 289, 292 (C.A. 4); *Overnite Transportation Company v. N.L.R.B.*, 308 F.2d 279, 283 (C.A. 4). (The first unfair labor practice charge was not filed until February 11, i.e. nearly 3 weeks after the Union's bargaining request.)

At the same time, Respondent ignored the Union's offer to submit, for examination and comparison with payroll signatures, the signed cards upon which the Union was relying. Nor did it question at the hearing the signature on any card except the one signed with an "X" by Ralph Hysell. (As noted *supra*, Hysell was not called as a witness, Respondent's evidence consisting of testimony that Hysell could print his name.) Thus, as the court said of the employer in *N.L.R.B. v. Inter-City Advertising Co.*, 190 F.2d 420, 421-422 (C.A. 4), Respondent made no attempt to determine whether the Union's claim was justified but instead engaged in unfair labor practices "in an attempt to get rid of it as a bargaining representative." See also *N.L.R.B. v. Philamon Laboratories, Inc.*, 298 F.2d 176, 180 (C.A. 2).

Having considered Respondent's failure to file its own representation petition, its failure to make any reply to

the Union's offer to submit the cards on which it was relying, its wholly unsupported charge that it had been advised of instances of misrepresentation by the Union, and its efforts to destroy the Union's majority by coercive conduct such as interrogation, threats, and surveillance, I find that its refusal to bargain was not due to a good faith doubt of the Union's majority "but to a positive rejection by the company of the principle of collective bargaining." *N.L.R.B. v. Inter-City Advertising Co.*, 190 F.2d 420, 422 (C.A. 4). That this was Respondent's attitude was revealed by Vice President Charles Gissel, who answered the Union's letters, when he gave the following reply to a question about one aspect of the Union's first letter, "I don't know. I would have to study it and see. I didn't read it that far." It follows, therefore, and I find that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain, upon request, with the majority representative of its employees in an appropriate bargaining unit.

Finally, there is no evidence that any of the employees who signed cards, with one possible exception, thereafter changed his mind. On the contrary, there is evidence indicating that all but three of the employees attended the Union meeting on April 17. In short, this is not a case in which the Union subsequently lost its majority and in which it must be inferred that its loss was attributable to the Company's unfair labor practices.

Apparently, Respondent's position is that a Union can never establish its majority on the basis of cards but can do so only in a Board-conducted election. But the courts have repeatedly affirmed the Board's holding that an employer does not have a "vested right" to an election, especially in situations in which the employer's unfair labor practices have made a fair election impossible.⁴⁰ As the Supreme Court pointed out in *United Mine Workers of America v. Arkansas Oak Flooring Company*, 351 U.S. 62, 74-75, the Act "says nothing as to how the employees' rep-

⁴⁰ See, for example: *N.L.R.B. v. Philamon Laboratories, Inc.*, 298 F.2d 176, 179 (C.A. 2); *N.L.R.B. v. Wheeling Pipe Line, Inc.*, 229 F.2d 391, 393 (C.A. 8); *N.L.R.B. v. Trimfit of California, Inc.*, 211 F.2d 207, 209 (C.A. 9).

representative shall be chosen . . ." and "It does not make it a condition that the representative . . . shall be certified by the Board . . ." In other words, the Act "leaves open the manner of choosing such representatives" and in cases in which a clear majority of the employees have, by means of cards, designated the Union to represent them, the employer is obligated to recognize that Union. In the words of the court, "A Board conducted election is not the only method by which an employer may satisfy itself as to the Union's majority status." 351 U.S. 73, 8, n. 8.

Two of the alternative methods open to the employer in a situation such as this one were mentioned by the court in *Overnite Transportation Company v. N.L.R.B.*, 308 F.2d 279, 283 (C.A. 4), where it stated:

If the company . . . sincerely doubted the Union's majority status it could have challenged the Union to substantiate its claims *by checking the union cards against the payroll or by requesting the Labor Board to hold a representation election* as is its right under Section 9(C)(1)(B) of the Act. (Emphasis supplied.)

Another method was approved by the court in *Florence Printing Co. v. N.L.R.B.*, 333 F.2d 289, 282 (C.A. 4), in which the court noted that the Company could have agreed to the private election suggested by the Union. An employer who not only fails to take any steps to check the Union's claims but also attempts "to defeat the Union by means of conduct violative of Section 8(a)(1) and (3)" of the Act may not later claim that it has a right to such an election. "Such a rule," the court said, "would encourage employers to commit unfair labor practices rather than promote the freedom of employees to decide for or against a union in an atmosphere free from restraint and coercion. . . ." *Overnite*, 308 F.2d at 283.

Respondent may also argue that each employee who signed a card should have been called and personally authenticated his card. But in a case such as this in which there is not the slightest evidence that the employees whose handwritten names (or in one case an "X") appear on the cards did not in fact sign them on the date appearing

thereon, the undisputed testimony of the persons in whose presence the cards were signed is sufficient. Cf. *The Colson Corporation v. N.L.R.B.*, 347 F.2d 128, 124 (C.A. 8), in which the court recognized that

The law permits alternative methods of authentication. Thus the court have approved the authentication of such cards by a witness to their execution. *N.L.R.B. v. Economy Food Center*, 7 Cir., 1964, 333 F.2d 468, 471, or by comparison with a known specimen of the person's handwriting. *N.L.R.B. v. Philamon Laboratories*, 2 Cir., 1962, 298 F.2d 176, 179-180, certiorari denied, 370 U.S. 919 . . .

In other words, when a Union has obtained signed cards from a majority of the employees, the employer is under a duty to bargain unless he "has a good-faith doubt as to the reliability of the authorization cards." (*Ibid.*).⁴¹

⁴¹ Although it has been found that Respondent's refusal to bargain was not motivated by a good faith doubt of the Union's majority, there is language in *International Ladies' Garment Workers Union v. N.L.R.B.*, 366 U.S. 731, 738-740, which suggests that a good faith doubt concerning the Union's majority is no defense to a refusal to bargain if the Union in fact represented a majority. There, the Court affirmed the Board's holding that the Company violated the Act by bargaining with a Union which it believed in good faith, though mistakenly, represented a majority of the employees. After noting that the employer's action "invaded" the employees' rights, the Court went on to say, "More need not be shown. . . . It follows that prohibited conduct cannot be excused by a showing of good faith." If the Union in fact represents a majority, it would seem that the employees are similarly denied their rights under the Act if the employer refuses to bargain even if he acts in good faith. This appeared to be the Court's view for it stated:

Assuming that an employer in good faith accepts or rejects a union claim of majority status, the validity of his decision may be tested in an unfair labor practice proceeding. If he is found to have erred in extending or withholding recognition, he is subject only to a remedial order requiring him to conform his conduct to the norms set out in the Act

Cf. the court's statement in *Florence Printing Co. v. N.L.R.B.*, 333 F.2d 289, 291 (C.A. 4), that "Even if the company entertained doubt [as to the appropriateness of the unit], it is no defense to a refusal-to-bargain charge where the unit is proper."

3. Respondent's discriminatory discharge of employees Mount and Frye

As set forth *supra*, Herbert Mount, Jr. began working for the Company in April, 1963 and was told shortly thereafter that the plant was "non-union" and that employees "caught" talking to a Union representative would be discharged. Mount worked in the shipping department under the supervision of Vice President Charles Gissel as did Jerry Lee Frye who was hired in April, 1963. Both men signed Union cards in January 1965, both were questioned and threatened by Gissel who clearly suspected that they were involved in the Union campaign. In April, they attended the Union meeting kept under surveillance by the Company. The next working day, Gissel told Mount that he had been seen at the meeting, and told Mount and Frye that they were to work mornings "until further notice." Then, on April 22, their timecards were "pulled" and they were accused of walking off the job because that did not work Wednesday afternoon and, instead, helped Mount's father-in-law for an undisclosed period. In addition, Gissel made a vulgar suggestion about what the men could do with the Union and threatened to call the police.⁴³

Needless to say, if an employer first directs employees to work from 5:30 a.m. to 11:30 a.m. "until further notice" and then discharges them for not working in the afternoon, his motive must be something other than the employees' failure to work or their disregard of orders.

Furthermore, the discharge of Mount and Frye cannot be considered in a vacuum but must be considered in the light of all that had gone before. "While union membership in itself is no bar to the discharge of employees, it sometimes discloses the real motive actuating an anti-union employer in discharging such employees, notwithstanding other asserted reasons." *N.L.R.B. v. Nabors*,

⁴³ As noted previously, Respondent's basic contention at the hearing was that it had taken no action against Mount and Frye, i.e. that they had quit. For some reason, Respondent refused to contend that the two men were discharged for cause and seemed to feel that it must establish that it was in no way responsible for the fact that they did not work for the Company after 11:30 a.m. on April 21.

196 F.2d 272, 275 (C.A. 5), certiorari denied, 344 U.S. 865. And the same court stated in *N.L.R.B. v. Houston & North Texas Motor Freight Lines*, 193 F.2d 394, 398 (C.A. 5), that in cases in which the Company's opposition to the Union is clear, "... every equivocal act that was done may be properly viewed in the light of [the Company's] animus toward the efforts to organize its men."

Similarly, the courts, as well as the Board, hold that discharges which "coincide" with the intensification of organizational activity, in this case the Union meeting, must be examined with special care. Cf. *N.L.R.B. v. Jones Sausage Company*, 257 F.2. 878, 882 (C.A. 4); *Angwell Curtain Company, Inc. v. N.L.R.B.*, 192 F.2d 899, 903 (C.A. 7); *Sardis Luggage Co. v. N.L.R.B.*, 234 F.2d 190, 196-197 (C.A. 5).

The series of events which ended with the discharge of Mount and Frye have been set forth previously. They began in September, 1964 at about the time a Board hearing was being held in Huntington as the result of an unfair labor practice charge filed by the same Union against another local packing company. At that time, Vice President Charles Gissel warned that employees "caught" talking to a stranger, who was a Union representative, would be discharged promptly. However, there was no Union activity among Gissel employees at that time and Charles Gissel had nothing more to say about the Union until the following January or February, i.e. until after the Union claimed to represent a majority of the employees and requested bargaining.

The Company's response and attitude toward the Union's claims and request have been discussed *supra*, including its failure to file its own representation petition or to examine the cards which the Union offered to submit. Even more significant is the Company's wholly unsupported assertion in justification of its refusal to bargain that it had been advised of "instances" in which the Union had obtained the signatures on the cards by misrepresentations. For if Respondent would assert a reason for its refusal to bargain which had no basis in fact, it might also be willing to assert (or create) an equally unsupported reason to justify its discharge of Union adherents.

After the Company's refusal to bargain, Charles Gissel repeatedly questioned employees about the Union and threatened reprisals against the employee leaders of the Union campaign. Among other things, Gissel asked employee Rush Moore what he knew about the Union, asked if employee Kidd was the "leader" of the Union movement, and said that he would fire Kidd immediately if he found out "for sure" that Kidd was the Union leader. Gissel also directed Moore to find out all he could about the Union, about who had signed cards, and to report what he found out. Gissel also asked Frye what he knew about the Union, what it had offered him, and told Frye that the Company could offer him more than the Union could. In addition, Gissel asked employee Burchell where he met Mount, whether Mount had said anything to him about the Union, and warned Burchell to stay away from Mount.

There is no evidence of any Union activity between January, when the cards were signed, and April, when the Union meeting was held. Similarly, Respondent had little if anything to say about the Union between January-February and April. Then when the Union meeting was announced, Gissel let it be known that he knew about the meeting and that some one would be there to report on who attended it. And Terry Lewis was at the hotel on Saturday, April 17, and called his aunt, Secretary-Treasurer Closterman, at the plant. It was also in April that Gissel asked employee Burchell if employee Hysell had tried to get Burchell to go to a meeting or to sign a card.

The admitted presence of Lewis at the hotel is one of the most significant facts in the record both generally and in connection with the discharge of Mount and Frye. As noted *supra*, it disproves the Company's repeated assertion that it was determined not to commit any unfair labor practice during the Union's 1965 campaign. It also discloses that Respondent was determined to learn the identity of the pro-union employees, a subject in which it could have had no legitimate interest. *N.L.R.B. v. Martin Sprocket & Gear Co.*, 329 F.2d 417, 420 (C.A. 5).

Perhaps most important of all, by keeping the Saturday meeting under surveillance, Respondent learned that Mount, Frye, Maynard and probably most of the employ-

ees who had signed cards in January were still pro-union. This information revealed that the Company's refusal to bargain, its interrogation and threats, and its announced plan to keep the meeting under surveillance had not been effective, i.e. its prior conduct had not caused the employees to defect from the Union and to abandon their efforts to obtain Union representation.

On Monday, Gissel made a change in working hours which affected only employees who attended the Union meeting, i.e. Mount, Frye, and Maynard. Although the alleged purpose of the change was to spread the work more evenly, there is no evidence that any employee benefited by the change, only that the hours of Mount, Frye, and Maynard were reduced. Then, when Mount and Frye did not work Wednesday afternoon, after having been told to work from 5:30 a.m. to 11:30 a.m. "until further notice," they were discharged, threatened with the police, and advised what they could do with the Union.

The relationship in time between Mount's and Frye's presence at the hotel, the change in their work schedule and their discharge a few days later is a fact which does not depend upon the credibility of any witness. Presumably, Respondent will argue that these events were wholly unrelated, i.e. were merely coincidental. Coincidences do happen but a finding of "coincidence" in view of the parallel series of events summarized above would be warranted only if Respondent's testimony was clear and precise and was corroborated by available documentary evidence. However, as noted *supra*, Charles Gissel was either unable or unwilling to state in detail and in his own words what he told the men when he notified them about their new schedule. No timecards were introduced although they were clearly available. Finally, Gissel's nephew and assistant, "Eddie" Lewis, refuted rather than corroborated Gissel's testimony about the schedule changes which, allegedly, applied to Lewis as well as to Mount, Frye, and Maynard. The failure of Respondent's testimony to stand up under scrutiny provides further evidence that something more was involved than the straightforward discharge of two employees for good cause and adds support to and strengthens the inference that they were discharged be-

cause of their Union activity. *N.L.R.B. v. Griggs Equipment, Inc.*, 307 F.2d 275, 278 (C.A. 5).

Having considered the record as a whole, including Gissel's instructions to Mount and Frye to work from 5:30 a.m. to 11:30 a.m. "until further notice," the Company's refusal to bargain, and its unsupported explanation for its refusal, its efforts to learn the identity of the Union adherents, its threats of reprisal against the employee leaders of the Union campaign, its surveillance of the Union meeting, the timing in relation thereto of the change in the schedule of the two men and their discharge, Gissel's statements at the time of the discharges, and the failure of Respondent's explanation of its action to stand up under scrutiny, I conclude that a preponderance of the evidence establishes that Respondent discharged Mount and Frye because of their Union activity, both generally and their presence at the meeting on April 17 in particular. It follows, therefore, and I find that Respondent thereby violated Section 8(a) (3) and (1) of the Act.

Furthermore, the conclusionary finding set forth above would not be different had it been found that there was a genuine misunderstanding about Mount's and Frye's hours on Wednesday, i.e. that Gissel believed that they understood that they were to work all day Wednesday and they misunderstood Gissel's instructions. If the men were expected to work, their absence no doubt caused some inconvenience. However, there is no claim that their absence meant that the day's work was not completed and there is no evidence that their absence caused the other employees to work later than usual to get the work done. And the fact remains that four men could be spared in the middle of the afternoon to go looking for Mount and Frye and to obtain "evidence" upon which Respondent could take action against them.

Moreover, there is no claim and no evidence that the Company has a firm and well-known rule that men absent on Wednesday, without good cause, are automatically terminated. Nor does it claim that it always checks on the activity of an absent employee. Perhaps, Respondent will argue that it set about obtaining "evidence" about what Mount and Frye were doing because it had reason to be-

lieve that they had "quit" and gone to work for some one else. This argument, however, would ignore the fact that Gissel knew that the men had done similar work on Monday and/or Tuesday afternoon only because they had been laid off at 11:30 a.m. on those days. Under these circumstances, Gissel might at least have considered the possibility that they were working elsewhere Wednesday afternoon for the same reason, i.e. because they believed that they were not supposed to work at the plant Wednesday afternoon. (Respondent did not claim that it did not expect the men to report to work Thursday morning.)

Instead, Gissel clearly decided to discharge Mount and Frye without waiting to hear their explanation and he refused to give any weight to Frye's insistence on Thursday morning that he did not understand that he was supposed to work the afternoon before. Although Gissel might justifiably have doubted Mount's word, he had no reason to believe that Frye was not telling the truth when he asserted that, at most, he misunderstood Gissel's instructions. (As noted *supra*, Gissel did not testify that he told Mount and Frye Thursday morning that he had given them explicit orders to work all day Wednesday. On the contrary, Frye testified without denial that Gissel said only that he and Mount should have *known* they were supposed to work all day Wednesday.) And, as Gissel admitted, the two men had never "pulled" such a "trick" before.

When to these facts are added Gissel's anger, his threat to call the police, and his vulgar suggestion about what the two men could do with the Union, it is apparent that Gissel's actions and reactions were not prompted primarily by their absence the previous afternoon even assuming, *arguendo*, that they had misunderstood Gissel's instructions. Moreover, even if the Company had grounds for which it could have discharged Mount and Frye validly, it does not follow automatically that they were discharged for this reason alone or for this reason primarily. On the contrary, as the court stated in *Nachman Corporation v. N.L.R.B.*, 337 F.2d 421, 422 (C.A. 7),

It is well settled that the presence of valid grounds for an employee's discharge does not legalize it where

"other circumstances indicate that the union activity weighed more heavily in the decision to fire him than did dissatisfaction with his performance." (Case citations omitted.)³

Applying the above test to the instant case, I would conclude, in the light of the entire record, that Mount and Frye would not have been discharged but for their Union activity even had it been found that Gissel believed that Mount and Frye understood that his instructions did not apply to Wednesday and that they, in turn mistakenly believed that they did. Even under these circumstances, I would find that Gissel seized upon their absence as a pretext not only to rid the plant of two active Union adherents but to indicate what could happen to other employees who continued to disregard Respondent's warning that Union activity would not be tolerated. Cf. *N.L.R.B. v. Link-Belt Co.*, 311 U.S. 584, 602, in which the Court recognized that an employer's purpose may be to make an "example" of employees whose conduct *vis-a-vis* the Union has displeased him.

Conclusions of Law

1. Gissel Packing Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of Respondent employed at its Huntington, West Virginia, plant including truck drivers, truck driver salesmen and the janitor, but excluding office clerical employees, salesmen, professional employees, guards, officers of Respondent, the salesmen foreman, the truck salesmen foreman, the working foremen of the processing and packaging department,

³ See also: *Wonder State Mfg. Co. v. N.L.R.B.*, 328 F.2d 835, 837 (C.A. 6); *N.L.R.B. v. Jamestown Sterling Corp.*, 211 F.2d 725, 726 (C.A. 2); *N.L.R.B. v. WTVJ, Inc.*, 268 F.2d 346, 347-348 (C.A. 5) and cases cited therein.

the slaughter house, the freight and delivery department and the maintenance department, and all other supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. On and after January 22, 1965, the date on which the Union requested recognition and bargaining, the Union represented in fact and in law a substantial majority of the employees in the bargaining unit set forth in paragraph 3 above.

5. Respondent's admitted refusal to bargain with the Union, on request, with respect to the wages, hours, and working conditions of the employees in a unit found appropriate for bargaining by the Board was not motivated by a good faith doubt about the Union's majority and, therefore, violated Section 8(a)(5) and (1) of the Act.

6. By interrogating employees concerning their Union activity and the Union activity of other employees, by threatening employees with reprisals for engaging in Union activity, by directing an employee to find out who had signed cards and to report the information to Vice President Charles Gissel, by asking an employee what the Union had offered him and by telling him that the Company could offer him more than the Union could, by announcing its intention to have someone at a Union meeting to report on who attended it, by keeping a Union meeting under surveillance, by making disparaging and vulgar remarks about the Union, the latter in a context of interrogation, threats, and surveillance, the Company engaged in conduct which constituted interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act.

7. By discharging employees Herbert Mount, Jr. and Jerry Lee Fye because of their Union membership and activity, Respondent violated Section 8(a)(3) and (1) of the Act.

8. Respondent did not violate the Act except by engaging in the conduct summarized in paragraphs 5, 6, and 7 above.

The remedy

Having found that Respondent engaged in the unfair labor practices set forth above, the recommended order will direct Respondent to cease and desist therefrom and to take the affirmative action normally required in such cases. Any backpay found to be due to Herbert Mount, Jr., and Jerry Lee Frye shall be computed in accordance with the formula set forth in *F. W. Woolworth*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716. Since the Union has at all times material herein represented a majority of the employees, in law and in fact, in an appropriate bargaining unit, the recommended order will require that it bargain with the Union on request.

In view of the broad range of Respondent's illegal conduct, including its discriminatory discharge of Mount and Frye, action which goes to the very heart of the Act (*N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (C.A. 4)), I am convinced that Respondent would interfere with the employees' statutory rights under similar circumstances in the future. As a result, the recommended order will direct Respondent to cease and desist from engaging in conduct which in any manner denies its employees the rights guaranteed them by the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended order:

RECOMMENDED ORDER

Gissel Packing Company, Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, or in any other labor organization, by discharging employees or by discriminating against them in any other manner because of their Union membership and activity.

(b) Refusing to bargain, on request, with the above-named Union, the majority representative of its employees in the following appropriate bargaining unit:

All production and maintenance employees of the Employer at its Huntington, West Virginia, plant including truck drivers, truck driver salesmen, and the janitor, but excluding office clerical employees, salesmen, professional employees, guards, officers of the Employer, the salesmen foreman, the truck driver salesmen foreman, the working foremen of the processing and packaging department, the slaughter house, the freight and delivery department, and the maintenance department, and all other supervisors as defined by the Act.

(c) Coercively interrogating its employees concerning their own and the Union activity of other employees, threatening reprisals for engaging in Union activity, directing employees to find out which employees have signed cards and report the information to management, stating that the Company could offer more than the Union could, announcing that it will have some one at a Union meeting to report on who attended it, keeping a Union meeting under surveillance, and making disparaging and vulgar remarks about the Union in a context of interrogation, threats, and surveillance.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to form, join, or assist Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, or any other labor organization, to bargain collectively through a representative of their own choosing, or to engage in other concerted activity for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activity.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Herbert Mount, Jr. and Jerry Lee Frye immediate and full reinstatement to their former or substan-

tially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any losses they may have suffered by reason of the discrimination against them in the manner set forth in the section entitled, "The remedy." Notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(b) Bargain collectively, upon request, with Food Store Employees Union, Local #347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, the statutory representative of its employees in the above-described appropriate bargaining unit, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(c) Preserve and make available to the Board or its agents, upon request, for examination and copying, all payroll records, social security payment records and reports, and all other reports necessary to analyze the amount of backpay due under these recommendations.

(d) Post at its plant copies of the notice attached hereto marked Appendix B.⁴ Copies of said notice to be furnished by the Regional Director of the Ninth Region shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall

⁴ "In the event that this Recommended Order be adopted by the Board, the words, "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a United States Court of Appeals, the words, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words, "A DECISION AND ORDER."

be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Ninth Region, in writing, within 20 days from the date of the receipt of this Decision what steps the Respondent has taken to comply herewith.⁴⁵

It is further recommended that the complaint be dismissed in all other respects.

Dated at Washington, D. C. December 14, 1965.

/s/ Rosanna A. Blake
Trial Examiner

⁴⁵ In the event that this Recommended Order be adopted by the Board this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order what steps the Respondent has taken to comply therewith."

APPENDIX A

Payroll January 22, 1965¹

<u>Name</u>	<u>Status</u>	<u>Card Date</u>
Mrs. R. E. Gissel	President	
E. W. Gissel	V. Pres. (Son of Mrs. R. E. Gissel)	
H. L. (Herbert) Gissel	V. Pres. (Son of Mrs. R. E. Gissel) right to hire/fire	
K. H. (Charles) Gissel	V. Pres. (Son of Mrs. R. E. Gissel) right to hire/fire	
A. L. Closterman	Sec.-Treas.; right to hire/fire	
H. B. Martin	Bookkeeper	
Harriett Curtis	Clerk in office	
Edith Lewis	V. Pres. (Daughter of Mrs. R. E. Gissel)	
Marie Snead	[assumed to be an employee]	
Leoris Gissel	(Daughter-in-law of Mrs. R. E. Gissel) right to hire/fire	
Siddy Caldwell	employee	1/16/65
Nell Charles	employee	1/18/65
Evelyn Collins	employee	
Emogene Ellis	employee	1/19/65
Alfreda Hutchison	(Niece of V. Pres. Charles Gissel; part-time supervisor)	
C. P. Adkins	employee	1/18/65
K. R. Adkins	employee	1/19/65
L. W. Bailey	employee	1/14/65
D. F. Billups	[assumed to be an employee]	1/20/65
J. J. Bonham	employee	1/21/65

¹The persons assumed to be employees are those as to whom there is no evidence in the record. The assumption is for the purpose of determining the maximum number of employees in the unit and does not constitute a finding that they are in fact in the unit if they come within any of the classifications excluded by the Board in its Decision and Direction of Election.

<u>Name</u>	<u>Status</u>	<u>Card Date</u>
I. H. Caldwell	employee	
George Collins	employee	1/15/65
R. L. Curry	[asumed to be an employee]	1/18/65
D. W. Ellis	employee	1/19/65
Earl Fortner, Jr.	employee	
Francis Fortune	employee	1/14/65
L. R. Hutchison	grandson-in-law of Mrs. R. E. Gissel; part-time foreman	
L. R. Hysell	employee	1/14/65
R. H. Hysell	employee	1/16/65
J. K. Johnson	employee	1/19/65
D. C. Kidd	employee	
H. C. Lewis (Terry)	(Son of V. Pres. Edith Lewis) part-time employee	
C. F. McComas, Jr.	employee	1/18/65
E. B. Maynard, Jr.	employee	1/21/65
Donald Meadows	employee	1/19/65
J. T. Mollohan	employee	1/13/65
W. R. Mollohan	foreman boning dept.	
R. D. Moore	employee	
W. D. Moore	employee	1/19/65
Dewey Parsley, Jr.	employee	1/22/65
Curtis Queen	employee	
P. D. Rowe	employee	1/18/65
J. M. Vance	employee	1/16/65
Elisha Watts	employee	1/16/65
R. B. Simon	supervisor	
J. L. Ellis	truck driver	1/18/65
J. L. Frye	employee	1/19/65
R. E. Lewis (Eddie)	(Son of V. Pres. Edith Lewis) assistant sup; right to discipline	
H. E. Mounts, Jr.	employee	1/19/65
J. P. Robinson	employee	1/20/65

<u>Name</u>	<u>Status</u>	<u>Card Date</u>
S. H. Rowe	employee	1/21/65
J. B. Scott	employee	1/18/65
Clifford Carley	sales supervisor (route salesman)	
W. W. Bowyer	truck salesman-peddler	
N. A. Gibson	peddler	
J. B. Harless	peddler	
T. L. Jordan	car salesman; lives in Logan, W. Va.	
C. R. Kitchen	peddler	
E. M. Osborne	peddler	
C. F. Springle	car salesman, lives in Charleston, W. Va.	
L. E. Turpin	peddler	1/20/65

APPENDIX

NOTICE
PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT discourage membership in **FOOD STORE EMPLOYEES UNION, LOCAL # 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO,** or any other Union, by discharging or by discriminating in any other manner against employees because of their Union membership and activity.

WE WILL NOT coercively question employees concerning their own Union activity or the Union activity of other employees; we will not threaten to discharge employees ~~or~~ to punish them in any other way because they join, work for, attend meetings of, or otherwise help **FOOD STORE EMPLOYEES UNION, LOCAL # 347,** or any other labor organization; direct employees to find out and report on which employees have signed Union cards; tell employees that we can offer more than the Union can; say that we will have someone at a Union meeting to report on who attended it; send anyone to a Union meeting or to a place where a Union meeting is going to be held; make remarks about the Union which will make employees believe that we will take action against them because of their Union activity.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in their right to join, work for, attend meetings of, or otherwise help **FOOD STORE EMPLOYEES, LOCAL # 347,** or any other labor organization.

WE WILL OFFER Herbert Mount, Jr., and Jerry Lee Frye immediate and full reinstatement to their

former or substantially equivalent positions, without loss of seniority or other rights and privileges, and we will pay each of them the amount of money necessary to compensate them for any loss he has suffered because of his discriminatory discharge.

WE WILL bargain, on request, with FOOD STORE EMPLOYEES, LOCAL UNION, # 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, as the representative of the employees in the unit set forth below, concerning wages, hours, and other terms and conditions of employment and, if agreement is reached, we will put the agreement in writing and will sign it:

All production and maintenance employees employed at our Huntington, West Virginia, plant, including truck drivers, truck driver salesmen and the janitor, but excluding office clerical employees, salesmen, professional employees, guards, officers of the Company, the salesmen foreman, the truck salesmen foreman, the working foremen of the processing and packaging department, the slaughter house, the freight and delivery department, and the maintenance department, and all other supervisors as defined by the Act.

All of our employees are free to become, remain, or to refrain from becoming or remaining members of FOOD STORE EMPLOYEES UNION, LOCAL # 347, or any other labor organization, except to the extent that such right may be affected by an agreement in conformity with Section 8(a) (3) of the National Labor Relations Act.

GISSEL PACKING COMPANY, INC.
(Employer)

Dated

By
(Representative) (Title)

NOTE: We will notify either of the above named employees presently serving in the Armed Forces of the United States of his right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 2023 Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202 (Tel. No. 684-3627).

EXCEPTIONS OF GISSEL PACKING COMPANY, INC. TO TRIAL EXAMINER'S DECISION

Gissel Packing Company, Inc. excepts to the Trial Examiner's Decision as follows:

1. The Examiner refused to grant Respondent's Motion to Dismiss Section 5(a) i, ii. (Transcript, page 9)
2. The Examiner refused to grant Respondent's Motion to Dismiss Section 5(a) iii of the Complaint. (Transcript, pages 9-10)
3. The Examiner refused to grant Respondent's Motion to Dismiss Paragraphs 5(a) vi, vii, ix, and Paragraph 5(b) of the Complaint. (Transcript page 10)
4. The Examiner refused to grant the Respondent's Motion to dismiss Sections 5 (b), (c), (f), in Case No. 9-CA-3583, of the Complaint. (Transcript, page 11)

5. The Examiner overruled the Respondent's objections to an answer of a witness designating "eligible employees" and comments of Counsel for the General Counsel as set out more fully in the record on the grounds stated therein. (Transcript, pages 22-23-24)

6. The Examiner refused to sustain the Respondent's objection to General Counsel's Exhibit No. 8 on the grounds set forth in the record. (Transcript pages 25-26)

7. The Examiner admitted testimony with the respect of other union activities involving other employers over the objection of the Respondent. (Record pages 37-38)

8. The Examiner overruled the Respondent's objection to permitting the General Counsel to call Charles Gissel as an adverse witness as set out in the record. (Transcript page 38)

9. The Examiner admitted General Counsel's Exhibit Nos. 10A through F over objections duly stated in the record. (Transcript pages 70-71)

10. The Examiner admitted General Counsel's Exhibits Nos. 10G through M over objection. (Transcript page 79)

11. The Examiner accepted hearsay evidence of witness Jesse C. Spitzer over objection. (Transcript, page 82)

12. The Examiner accepted over Respondent's objection General Counsel Exhibits 10-M through Z. (Transcript, page 88)

13. The Examiner accepted immaterial evidence on incidents occurring at times not in question in the proceeding over objection of the Respondent. (Transcript pages 104-105)

14. The Examiner accepted General Counsel's Exhibits 10AA and 10BB over objection of the Respondent. (Transcript page 122)

15. The Examiner admitted General Counsel's Exhibit No. 11 over objection. (Transcript, pages 157-158)

16. The Examiner permitted witness Jerry Lee Frye to testify with respect to state of mind evidence over objection of Respondent. (Transcript, 162)

17. The Examiner accepted irrelevant evidence from witness Jerry Lee Frye over objections stated in the record. (Transcript, pages 172-173)

18. The Examiner accepted General Counsel's Exhibit No. 10CC over objection. (Transcript page 176)

19. The Examiner exhibited a hostile attitude toward the Respondent by refusing to permit the Respondent to ask even routine questions with respect to witnesses offered by the General Counsel. (Transcript, page 177-178)

20. The Examiner refused to permit the Respondent to make an offer of proof by an avowel of the record. (Transcript, pages 187-188)

21. The Examiner refused to grant the Respondent's Motion to strike the entire testimony of witness Frye on the grounds stated in the record. (Transcript, page 196-197)

22. The Examiner accepted into evidence General Counsel's Exhibit No. 10-GG over Respondent's objection. (Transcript page 204)

23. The Examiner admitted irrelevant evidence over objection of the Respondent. (Transcript pages 210-211)

24. The Examiner permitted witness Burchell to give evidence pertaining to his state of mind over objection of the Respondent. (Transcript pages 211-212)

25. The Examiner admitted Respondent's Exhibit No. 10-HH over objection of Respondent. (Transcript pages 215-216)

26. The Examiner permitted the introduction of evidence not relevant to matters in the Complaint and permitted General Counsel to cross-examine his own witness. (Transcript 218-219)

27. Over the Respondent's repeated objections, the Examiner permitted witness Maynard to read statements, permitted the General Counsel to cross-examine his own witness. (Transcript pages 221-224)

28. The Examiner made remarks indicating a prejudice few toward the evfflence offered by the Respondent and implying that she would not give fair consideration to certain evidence. (Transcript 251)

29. The Respondent permitted improper redirect examination. (Transcript page 259)

30. The Examiner admitted into evidence General Counsel's Exhibit 10-FF over objection. (Transcript page 269)

31. The Examiner admitted General Counsel's Exhibit No. 10-EE over objection. (Transcript page 283)

32. The Examiner made comments with respect to the weight of the evidence adverse to the Respondent indicating the prejudice few toward the Respondent's evidence. (Transcript pages 404-411)

33. The Examiner permitted a witness to testify whether he was for or against the union over objection of the Respondent. (Transcript page 433, and motions in connection therewith.)

34. The Examiner refused to grant Respondent's Motion to strike certain testimony of witness Rush D. Moore. (Transcript 441-443)

35. The Examiner permitted certain evidence to be introduced which was irrelevant and immaterial over the objection of the Respondent. (Transcript page 408)

36. The Trial Examiner improperly took over the conduct of the General Counsel's case and had certain irrelevant evidence introduced over objection of Respondent. (Transcript pages 450-453)

37. The Examiner permitted colloquy of Counsel for the General Counsel to stand in the record over objection. (Transcript page 496)

38. The Examiner permitted certain evidence which was objected to by the Respondent. (Transcript pages 496-497)

39. The Examiner permitted the General Counsel to introduce evidence which was not proper cross-examination. (Transcript page 532). (Transcript 533-534)

40. The Examiner overruled the Respondent's objection to certain witnesses being in the hearing room. (Transcript page 537)

41. The Examiner permitted witness Simon to testify with respect to whether or not a certain person was for or against the union over objection. (Transcript page 539)

42. The Examiner, over objection of the Respondent, permitted Counsel for the General Counsel to argue at length with his own witnesses. (Transcript page 561)

43. Over the objection of the Respondent, the Examiner permitted witnesses for the General Counsel to testify

with respect to their state of mind. (Transcript pages 562-563)

44. The Employer accepts to the Trial Examiner's findings and conclusion in their findings as follows:

(a) The Examiner rejected a large portion of the testimony of Carl Gissel because of a certain unrelated incident pertaining to Lewis, (Page 3) there was no connection between the veracity of Carl Gissel in the incident involving Lewis which would lead to such a conclusion.

(b) The failure of the company to interview time cards has been seized upon by the Trial Examiner as important in her conclusions when there was no obligation or showing as to what the time cards purported and her inference therefrom is not supported by the evidence or any reasonable conclusion. (Page 4)

(c) The Examiner relied upon previous hearings conducted by the National Labor Relations Board which were not pertinent to the issues involved in the present hearing. (Pages 4-5)

(d) The Examiner accepted the evidence of application cards which she admitted were not properly identified. (Page 9)

(e) The Examiner arbitrarily credited the testimony of Union witness Frye. (Page 10)

(f) The Examiner uses tortuous and improper reasoning in connection with the testimony of witness Lewis and the conclusion is drawn therefrom. (Page 15)

(g) The Examiner arbitrarily credited certain testimony and reached improper conclusions based on inadmissible evidence with respect to the alleged discriminatory discharges. (Pages 16-21)

(h) The Examiner reached improper conclusions based on inadmissible evidence arbitrarily crediting some witnesses and disregarding the testimony of others in finding the Respondent guilty of refusing to bargain. (Page 23-26)

(i) The Examiner incorrectly credited certain testimony and rejected certain other testimony in con-

cluding that the discharge of Mount and Frye were discriminatory. (Page 26-30)

(j) The Respondent accepts to the conclusions of law. (Transcript pages 30-31)

(k) The Examiner finds that the Employer did not have a good faith doubt as to the union majority status. There was no agreement as to what constituted a valid and appropriate unit. The remedy recommended by the Examiner would deny the employees of the Respondent the right to determine a union of their choice provided by Section 7 of the National Labor Relations Act. Accordingly, the Employer says that the proposed remedy and recommended order are improper, inappropriate, and unlawful.

/s/ John E. Jenkins
Of Counsel for Gissel
Packing Company, Inc.

JENKINS & JENKINS
Attorneys for
Gissel Packing Company, Inc.
500 Kelly-Hatfield Building
Huntington, West Virginia

[Certificate of Service]

DECISION AND ORDER

On December 14, 1965, Trial Examiner Rosanna A. Blake issued her Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the ruling of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions,¹ and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modification noted below.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the Respondent, Gissel Packing Company, Inc., Huntington, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C., March 25, 1966.

/s/ John H. Fanning, Member
 /s/ Gerald A. Brown, Member
 /s/ Sam Zagoria, Member

[SEAL]

NATIONAL LABOR RELATIONS BOARD

¹ The Respondent excepted to the credibility findings made by the Trial Examiner. It is the Board's established practice, however, not to overrule a Trial Examiner's resolutions with respect to credibility unless, as is not the case here, the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd, 188 F.2d 362 (C.A. 3).

² In adopting the Trial Examiner's conclusion that the Respondent violated Section 8(a)(5) of the Act, we need not rely upon her interpretation of the Supreme Court's opinion in *International Ladies' Garment Workers Union (Bernhard-Altmann Texas Corp.) v. N.L.R.B.*, 366 U.S. 731, as set forth in footnote 41 of the Trial Examiner's Decision.

The following inadvertences contained in the Trial Examiner's Decision are hereby corrected: "September 1965" is changed to "September 1964" (p. 11, line 39); "November 1963" is changed to "November 1964" (p. 17, line 55); "April 1963 is changed to "June 1963" (p. 26, line 22).

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11,228.

* NATIONAL LABOR RELATIONS BOARD, PETITIONER

versus

GISSEL PACKING COMPANY, INC., RESPONDENT

FOOD STORE EMPLOYEES UNION, LOCAL # 347, AMAL-
GAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF
NORTH AMERICA, AFL-CIO, INTERVENOR

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

(Argued January 11, 1968. Decided June 28, 1968.)

Before HAYNSWORTH, Chief Judge, and BOREMAN and
WINTER, Circuit Judges.

PER CURIAM:

The National Labor Relations Board petitions for enforcement of its order¹ directing respondent, Gissel Packing Company, Inc. to take certain steps to remedy violations of the National Labor Relations Act² found by the Board to have occurred. We decline enforcement of that portion of the order directing respondent to bargain with the union upon request.

¹ 157 NLRB No. 94.

² 29 U.S.C.A. § 151 *et seq.*

Respondent is a West Virginia corporation engaged in the slaughtering, processing, and wholesaling of beef and pork products. Amalgamated Meat Cutters and Butcher Workmen of North America, the union, attempted to organize certain of respondent's employees in 1960 and 1961. The Board directed that an election be held, but the union was defeated. About the middle of January, 1965, the union began a second campaign to organize respondent's employees, and it is out of this campaign that this controversy arises.

The Board concluded that during the 1965 campaign respondent violated Section 8(a)(1) of the Act by coercing its employees in the exercise of their rights under the Act and Section 8(a)(3) by discharging two employees because of their union membership and activity. Substantial evidence on the whole record, though not uncontradicted, exists to support these findings, and we enforce that portion of the Board's order requiring respondent to remedy these violations.

We are unable, however, to accept the Board's determination that respondent violated Sections 8(a)(5) and (1) of the Act by refusing to bargain with the union upon request, for the evidence is insufficient to support a finding that respondent did not have a good faith doubt as to the union's majority status when confronted with the demand for recognition. On January 22, 1965, union representative Spencer informed respondent that the union represented a majority of the employees in a certain unit and requested recognition, basing his claim upon possession by the union of signed authorization cards from 31 of the 47 unit employees. Respondent replied through its agents that it doubted the union's claim, and invited Spencer to file for a Board election. The bases of its doubts were buttressed by the fact that a few years earlier the union lost a valid secret election after a similar claim of majority status.

In recent cases we have had occasion to point out that authorization cards are such unreliable indicators of the desires of the employees that an employer confronted with a demand for recognition based solely upon them is justi-

fied in withholding recognition pending the result of a certification election.³ The reasoning elaborated in those decisions applies with equal force here, and we decline enforcement of that portion of the Board's order requiring respondent to bargain with the union.

*Enforcement granted in part
and denied in part.*

³ Crawford Mfg. Co. v. NLRB, 4 Cir., 386 F.2d 367, cert. denied 36 LW 3403, ___ U.S. ___; NLRB v. S.S. Logan Packing Co., 4 Cir., 386 F.2d 562; NLRB v. Sehon Stevenson Co., Inc., 4 Cir., 386 F.2d 551; NLRB v. Heck's, Inc., 4 Cir., ___ F.2d ___, (decided this day).

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11,228.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

GISSEL PACKING COMPANY, INC., RESPONDENT

FOOD STORE EMPLOYEES UNION, LOCAL 347, AMALGA-
MATED MEAT CUTTERS AND BUTCHER WORKMEN OF
NORTH AMERICA, AFL-CIO, INTERVENOR

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for enforcement of a certain order issued by it against Respondent, Gissel Packing Company, Inc., Huntington, West Virginia, its officers, agents, successors, and assigns on the 25th day of March, 1966, in a proceeding before the said Board known upon its records as Case Nos. 9-CA-3472 and 9-CA-3583; upon the answer of the said Respondent, and upon the certified list in lieu of a transcript of the record; and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit that the said order of the National Labor Relations Board be, and it is hereby, enforced as to that portion dealing with the violations of §§ 8(a) (1) and (3) of the National Labor Relations Act, and that enforcement with regard to that portion of the order requiring respondent to bargain with the union is denied; and that the said Respondent, Gissel Packing Company, Inc., its officers, agents, successors and assigns abide by and perform the directions of the Board in said

order as so enforced contained, in accordance with the opinion of the Court filed herein.

/s/ Clement F. Haynsworth, Jr.
Chief Judge, Fourth Circuit

A True Copy, Teste:

Samuel W. Phillips, Clerk
By Margaret L. Davis
Deputy Clerk

[SEAL]

Filed, June 28, 1968, Samuel W. Phillips, Clerk

SUPREME COURT OF THE UNITED STATES

No. 573, October Term, 1968

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GISSEL PACKING COMPANY, INC., ET AL.

ORDER ALLOWING CERTIORARI—Filed December 16, 1968

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is consolidated with No. 691 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

No. 691, October Term, 1968

FOOD STORE EMPLOYEES UNION, LOCAL NO. 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, PETITIONER

v.

GISSEL PACKING CO., INC.

ORDER ALLOWING CERTIORARI—Filed December 16, 1968

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is consolidated with No. 573 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.